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No. 36935-4-II

COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON

CITY OF PORT ANGELES, Respondent,

v.

OUR WATER-OUR CHOICE, and PROTECT OUR WATERS,
Petitioners

and

WASHINGTON DENTAL SERVICE FOUNDATION, LLC,
A Party in Interest.

PETITION FOR REVIEW

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A. IDENTITY OF PETITIONER

Protect Our Waters (“POW”) and Our Water-Our Choice (“OWOC”) ask this Court to accept review of the published Court of Appeals decision terminating review designated in Part B of this Petition.

B. COURT OF APPEALS DECISION

A copy of the decision is in the Appendix at pages A-1 through A-14. A copy of the order denying Appellants’ Motion for Reconsideration is in the Appendix at page A-15.

C. ISSUES PRESENTED FOR REVIEW

1) Does a corporate code city have authority either by Article XI, Section 11 of the Washington State Constitution (police power) or by RCW 35A.70.070(6) and Chapter 35.88 RCW to adopt strict local water purity standards for all public water systems serving the inhabitants of the City despite the fact that City’s legislative body operates one of the public water systems serving the City?

2) When a city has not previously adopted any local water purity standards for all public water systems serving the inhabitants of the City, are the first initiatives that establish such standards considered to be legislative, particularly when they regulate the use of public drinking water systems to medicate citizens?

a) As an ancillary issue, should this Court make a finding of fact based on admissions in the record that multiple public water systems serve the inhabitants of the City?

3) Should a court review only the “fundamental and overriding purpose” of an initiative when determining whether an initiative’s purpose is legislative in nature?

4) Beyond determining that procedural requirements are met, that an initiative is legislative, and that the “fundamental and overriding purpose” is within the state’s or corporate city’s power to enact, may a court performing pre-election review determine whether local initiatives would be consistent with federal or state laws, if approved?

5) For each of the initiatives reviewed by the Court of Appeals decision, is it legislative and is its “fundamental and overriding purpose” within the corporate city’s power to enact such that this Court should issue a decree pursuant to RCW 35.17.290 to place one or both initiatives on the ballot?

D. STATEMENT OF THE CASE

1. Statement of Procedural History of the Case

On September 8, 2006 and September 11, 2006, Petitioner POW filed initiative petitions to have the Port Angeles City Council enact an ordinance or submit to a vote of the residents of the City the “Water Additives Safety Act.”¹ A copy of the POW initiative petition with the text of the proposed ordinance is in the Appendix at pages A-16 through A-17.²

¹ Stipulation and Order at 1, Paragraph 1 (ACP at 145); Judgment at 4-6, Findings of Fact 3.2, 3.5, and 3.10 (ACP at 28-30); POW initiative petition (ACP at 177-78). ACP refers to Appellants’ Clerk’s Papers, RP1 refers to the Report of Proceedings for the trial, and RP2 refers to the Report of Proceedings for the Presentation.

² See ACP at 177-78.

Also on September 8, 2006 and on September 12, 2006, Petitioner OWOC filed initiative petitions to have the Port Angeles City Council enact an ordinance or submit to a vote of the residents of the City the "Medical Independence Act."³ A copy of the OWOC initiative petition with the text of the proposed ordinance is in the Appendix at pages A-18 through A-19.⁴

The City failed to submit the POW and OWOC initiative petitions to the County Auditor by September 13, 2006.⁵ In response, on September 19, 2006, POW and OWOC filed a Complaint for Writ of Mandamus and Petition Pursuant to RCW 35.17.290⁶ under Clallam County Superior Court Cause No. 06-2-00828-9.⁷

The POW and OWOC Writ of Mandamus sought to compel the City Clerk to submit the initiative petitions to the County Auditor.⁸ The POW and OWOC Petition Pursuant to RCW 35.17.290 sought to have the court find the

³ Stipulation and Order at 2, Paragraph 2 (ACP at 146); Judgment at 4-6, Findings of Fact 3.2, 3.4, and 3.10 (ACP at 28-30); OWOC initiative petition (ACP at 171-72).

⁴ See ACP at 171-72.

⁵ Judgment at 6-7, Findings of Fact 3.17, 3.11, and 3.12 (ACP at 30-31). September 13, 2006 was three working days after September 8, 2006. RCW 35A.01.040(4) provides, in part:

Within three working days after the filing of a petition, the officer with whom the petition is filed shall transmit the petition to the county auditor for petitions signed by registered voters

⁶ RCW 35.17.290 is in the Appendix at page A-42.

⁷ Judgment at 6, Finding of Fact 3.13 (ACP at 30); Judgment at 3, Paragraph 2.1 (ACP at 27); POW and OWOC Complaint (ACP at 179-88).

⁸ Judgment at 6, Finding of Fact 3.13 (ACP at 30); POW and OWOC Complaint at 1-2 (ACP at 179-80).

POW and OWOC initiative petitions sufficient and to procure a decree ordering an election to be held in the City for the purpose of voting upon the proposed ordinances.⁹

On September 18, 2006, the City filed a Complaint for Declaratory Judgment under Clallam County Superior Court Cause No. 06-2-00823-8.¹⁰

The City requested a declaration that the initiatives were beyond the scope of the initiative power for the City of Port Angeles, a non-charter code city.¹¹

On September 26, 2006, a Stipulation and Order was filed that consolidated the two cases under Clallam County Superior Court Cause No. 06-2-00828-9.¹² In signing the Stipulation and Order, the City agreed to “promptly forward the POW and OWOC initiative petitions to the County Auditor for determination of sufficiency.”¹³ The stipulated order made

⁹ Stipulation and Order at 2, Paragraph 5 (ACP at 146); POW and OWOC Complaint at 2, Paragraph 1.2 (ACP at 180). The full text of RCW 35.17.290 is:

If the clerk finds the petition insufficient or if the commission refuses either to pass an initiative ordinance or order an election thereon, any taxpayer may commence an action in the superior court against the city and procure a decree ordering an election to be held in the city for the purpose of voting upon the proposed ordinance if the court finds the petition to be sufficient.

¹⁰ Stipulation and Order at 2, Paragraph 4 (ACP at 146); Judgment at 6, Finding of Fact 3.13 (ACP at 30); City’s Complaint (ACP at 5-22).

¹¹ Judgment at 3, Paragraph 2.1 (ACP at 27); Stipulation and Order at 2, Paragraph 4 (ACP at 146).

¹² Stipulation and Order at 1 (ACP at 145); Stipulation and Order at 4-5, Paragraph 1 (ACP at 148-49); Judgment at 3, Paragraph 2.1 (ACP at 27).

¹³ Stipulation and Order at 2, Paragraph 8 (ACP at 146); Judgment at 7, Finding of Fact 3.18 (ACP at 31).

Washington Dental Service Foundation, LLC, (“WDSF”) a party in Cause No. 06-2-00828-9.¹⁴ The stipulated order suspended the City’s legal obligation regarding the initiative petitions until the trial court issued its order on January 19, 2007.¹⁵ The Stipulation and Order set the schedule.¹⁶ The hearing on the merits and trial was held before the Honorable M. Karlynn Haberly on Monday, December 11, 2006.¹⁷ The City was represented by William E. Bloor, City Attorney for the City of Port Angeles, POW and OWOC were represented by Gerald Steel, P.E., attorney at law, and WDSF was represented by Roger A. Pearce and Foster Pepper PLLC.¹⁸ The trial court based its judgment on undisputed facts.

Procedurally, each of the parties submitted opening, response and reply briefs accompanied by declarations and exhibits. The Stipulation and Order contemplated a hearing on the merits, which was scheduled for December 11, 2006, and a final order. Accordingly, the Court treats the hearing as a trial on undisputed facts. Even though the parties did not submit a set of stipulated facts, the following relevant facts were undisputed and, based on these undisputed facts, the initiative petitions filed by Our Water-Our Choice and Protect Our Waters (attached to those parties’ Verified Application for Peremptory Writ), and the Agreement Regarding Gift of Fluoridation System

¹⁴ Stipulation and Order at 4-5, Paragraph 2 (ACP at 148-49); Judgment at 3-4, Finding of Fact 3.1 (ACP at 27-28).

¹⁵ Stipulation and Order at 4-5, Paragraph 3 (ACP at 148-49); Judgment at 3-4, Finding of Fact 3.1 (ACP at 27-28).

¹⁶ Stipulation and Order at 4-5, Paragraphs 4-5 (ACP at 148-49); Judgment at 3-4, Finding of Fact 3.1 (ACP at 27-28).

¹⁷ Judgment at 3-4, Paragraph 2.2 and Finding of Fact 3.2 (ACP 27-28); RP1 at 1.

¹⁸ Judgment at 3, Paragraph 2.2 (ACP at 27).

(attached to the City's Complaint For Declaratory Judgment), the Court enters the final judgment herein.

Judgment at 4, Finding of Fact 3.2 (ACP at 28).

WDSF submitted a motion to dismiss and motion for judgment on the pleadings and the trial court subsumed those motions in its ruling on the merits.¹⁹

A presentation of the proposed Judgment was held on January 19, 2007.²⁰ POW and OWOC presented exceptions to those proposed findings prepared by the City and WDSF.²¹ The exceptions presented by POW and OWOC are in the record.²² In particular, POW and OWOC argued for one additional Finding of Fact:

3.20 There are other public water systems besides the Port Angeles municipal water system that provide water service in the City of Port Angeles.

ACP at 45; RP2 at 14-19. The proposed finding was not accepted by the trial court.²³

POW and OWOC filed a Notice of Appeal to the Supreme Court with the Clallam County Superior Court on February 12, 2007.²⁴ The Supreme Court transferred the case to the Court of Appeals.²⁵ The Court of Appeals

¹⁹ Judgment at 10, Paragraph 5.3 (ACP at 34).

²⁰ RP2 at 1.

²¹ RP2 at 2-3.

²² ACP at 38-49.

²³ RP2 at 19.

²⁴ ACP 23-35.

²⁵ Appendix at page A-3.

issued its published Opinion on July 15, 2008. POW and OWOC filed a Motion for Reconsideration on August 4, 2008. The Motion was denied on August 27, 2008. Appendix at page A-15.

2. Statement of the Facts of the Case

This case is based on undisputed facts.²⁶ On October 7, 2006, the County Auditor found the initiative petitions to be sufficient and sent letters back to the City Clerk stating, “[t]he required number of signatures has been met, thus allowing submission to the voters at an election to be determined.”²⁷

The City has not adopted any water purity standards that are more strict than the State standards.²⁸ The proposed initiative Ordinances seek to establish such local standards for all water supplies serving the City now or in the future.²⁹ Section 1 of the Water Additives Safety Act states:

This ordinance requires that any substances which are added [to public drinking water supplies in the City] with the intention of treating people, not the water, must meet existing health-based standards which protect the entire population, including infants, the infirm and the elderly over their lifetime.

Appendix at page A-17.

In Section 2(C) of this Act, it defines “contaminated with filth” as the condition where drinking water would have contaminants at concentrations that exceed certain goals established for drinking water by the federal

²⁶ Judgment at 4, Finding of Fact 3.2 (ACP at 28).

²⁷ Judgment at 7, Finding of Fact 3.18 (ACP at 31).

²⁸ See Port Angeles Municipal Code.

²⁹ Appendix at pages A-17 and A-19.

Environmental Protection Agency (“EPA”). Id. These EPA goals are called Maximum Contaminant Level Goals or “MCLG”. WAC 173-200-020(16).³⁰ The EPA also sets Maximum Contaminant Levels (“MCL”) for drinking water. WAC 173-200-020(15).³¹ The EPA goals (MCLG) for drinking water are more strict and more safe than the EPA allowed contaminant levels (MCL) in drinking water. The MCLG are set at levels “for which no known or anticipated adverse effects on human health occur including an adequate margin of safety.” WAC 173-200-020(16). The MCL and MCLG with health comments are in WAC 246-290-72012 (Appendix page A-49 et seq.)

Section 3(B) of the Water Additives Safety Act states that it is prohibited to add any substance to any public drinking water supply that serves the City if the addition will cause the drinking water to be “contaminated with filth.” Appendix page A-17. In other words, substances may not be added to public water supplies serving the City if it would cause a contaminant concentration to exceed the MCLG set by the EPA. Id.

Section 3(A) of the Water Additives Safety Act states that no person shall add to any public drinking water supply any substance that is intended to act as a medication for humans unless the substance is approved by the federal Food and Drug Administration (“FDA”) for safe delivery using the water system. Id. If there is no approval by FDA for delivering a medication in drinking water, such delivery would be prohibited by this subsection.

The Water Additives Safety Act in the third Whereas Clause states:

⁴⁴ ACP at 45; RP2 at 14-19. .

³¹ WAC 173-200-020(15) is in the Appendix at page A-48.

WHEREAS under Article 11, SECTION 11 of the State Constitution, RCW 35.88.020 and RCW 35A.70.070(6), The City Of Port Angeles may prescribe what acts shall constitute offenses against the purity of its water supply and exercise control over water pollution, and RCW 70.142.010(2) expressly states that State and local standards for chemical contaminants may be more strict than the federal standards [the MCL set by EPA].

Id.³²

The City is a code city operating under Title 35A RCW and pursuant to authority in RCW 35A.11.020³³, the City has operated a drinking water utility since 1924.³⁴ The City is not a county and its population is less than 125,000.³⁵ In 2003, the City Council passed a motion to approve fluoridation of the City's water supply.³⁶ In 2005, WDSF entered a contract ("Agreement") with the City wherein WDSF paid for the design, construction, and installation of a fluoridation system and the City agreed to fluoridate its municipal public water supply for ten years.³⁷ If the City fails to meet its obligations under the Agreement, the City has agreed to repay WDSF for its expenses for design, construction, and installation of the

³² RCW 70.142.010(2) is in the Appendix at page A-47.

³³ Finding of Fact 3.3 erroneously references RCW 35.11.020 instead of RCW 35A.11.020. Similarly, Finding of Fact 3.11 erroneously references RCW 35A.11.110 instead of RCW 35A.11.100. RCW 35A.11.020 is in the Appendix at page A-40.

³⁴ Judgment at 4, Finding of Fact 3.3 (ACP at 28); Judgment at 6, Finding of Fact 3.15 (ACP at 30).

³⁵ Judgment at 7, Finding of Fact 3.19 (ACP at 31).

³⁶ Judgment at 5, Finding of Fact 3.7 (ACP at 29).

³⁷ Judgment at 5, Finding of Fact 3.8 (ACP at 29); Agreement at 5, Paragraph 5.5 (ACP at 18).

fluoridation system up to \$433,000.³⁸ WDSF delivered the fluoridation system to the City in May, 2006 and the City is currently fluoridating its municipal public water system.³⁹

Section 5(B) of the Water Additives Safety Act states that thirty days after the Act is passed by the voters, fluoridation will cease to be allowed until proof is provided that the substance meets the criteria set by the Act. Id. Section 3(A) of the Water Additives Safety Act regulates any substance added to the water by any person if the substance is intended to “affect the physical or mental functions of the body of any person.” Id. This section reflects a general law requirement regulating all medications and not just fluoridation. Id. Section 3(B) of the Act regulates any addition of any substances that would cause the contaminants in the water supply to exceed the MCLG. Id. Section 3(C) generally exempts from this regulation, substances that are added to the water to treat the water to make it safe or potable. Id. Pursuant to Section 4 of the Act, violations are punishable as a gross misdemeanors. Id.

The Medical Independence Act is similar to the Water Additives Safety Act except that it outright prohibits putting substances in public water supplies with the intent of medicating or drugging persons or animals. Appendix page A-19. It also generally exempts substances used to treat water. Id.

³⁸ Judgment at 5, Finding of Fact 3.8 (ACP at 29); Agreement at 6, Paragraph 5.9 (ACP at 19).

³⁹ Judgment at 5, Finding of Fact 3.9 (ACP at 29).

The full text of the undisputed facts accepted by the trial court appears in the Appendix at pages A-22 through A-26. In addition, the trial court relied upon the language in the initiative petition filed by POW,⁴⁰ the initiative petition filed by OWOC,⁴¹ and the Agreement.⁴² The Agreement⁴³ is in the Appendix at A-31 through A-39.

3. Additional Undisputed Finding of Fact

POW and OWOC proposed Finding of Fact 3.20:

3.20 There are other public water systems besides the Port Angeles municipal water system that provide water service in the City of Port Angeles.

This finding of fact was proposed in the POW and OWOC exceptions at the January 19, 2007 presentation.⁴⁴ This finding was not accepted by the trial court.⁴⁵

At the December 11, 2006 trial, WDSF admitted that the small non-municipal water system that provides water service in the City of Port Angeles that is described in the Second Declaration of Gerald Steel⁴⁶ “is a public drinking water system.”⁴⁷ In further support of this proposed finding,

⁴⁰ Appendix at A-16 through A-17 (ACP at 177-78).

⁴¹ Appendix at A-18 through A-19 (ACP at 171-72).

⁴² Judgment at 4, Finding of Fact 3.2 (ACP at 28).

⁴³ ACP at 14-22.

⁴⁴ ACP at 45; RP2 at 14-19. .

⁴⁵ RP2 at 19.

⁴⁶ ACP at 71-90.

⁴⁷ RP1 at 85.

Gerald Steel presented two letters to the trial court on January 19, 2007.⁴⁸ The first letter reports that PUD #1 of Clallam County provides public water service to an estimated 46 customers inside the City of Port Angeles. Amended ACP at 51A. The second letter reports that the Dry Creek Water Association, Inc. provides public water service to an estimated 31 customers inside the City of Port Angeles. Amended ACP at 51B. The City admitted to the facts presented in these letters.⁴⁹ The WDSF stated,

Just very briefly, in our reply briefs we didn't say that the City was only served by the City's public water system. We said that there may be other water systems, like small well systems, but we didn't think it was material to the issues before the court.

RP2 at 18, lines 17-23.

Petitioners requested that the Court of Appeals adopt the missing finding of fact on their own.⁵⁰ The Court of Appeals declined to address this missing finding stating that it would not change their decision.⁵¹ Petitioners request that this Court rule on this ancillary issue.

E. ARGUMENT

This Court has clearly laid out the scope of pre-election review of statewide initiatives and referendums. Challenges that a measure, if passed, would conflict with other law are substantive invalidity challenges that are

⁴⁸ RP2 at 15-16. The trial court allowed these letters to be filed with the Clerk but did not accept them. RP2 at 19, lines 6-8. These letters were filed in the Third Declaration of Gerald Steel. Amended ACP at 50-51B.

⁴⁹ RP2 at 18, lines 5-10 (referring to the letters, the City states "Technically, they are correct.").

⁵⁰ Appendix page A-13.

⁵¹ Id.

not allowed in this state. Coppernoll v. Reed, 155 Wn.2d 290, 297-99, 119 P.3d 318 (2005). Procedural challenges are allowed.⁵² Id. Challenges that “the subject matter is not proper for direct legislation are allowed. Id. A statewide initiative is not proper for direct legislation if it is beyond Washington’s legislative power to enact. Id. at 299-305. If there is legislative authority for a measure it is proper for direct legislation. Id. A challenge that a measure, if passed, would conflict with other laws is a substantive invalidity challenge that is not allowed in pre-election review. Id. at 297-305.

Since the issuance of the Coppernoll decision, this Court has not had a decision that applies the Coppernoll analysis of “substantive invalidity” to pre-election review of a local initiative measure.⁵³ There is a need for this Court to clarify the distinction between “substantive invalidity” and “legislative power to enact” challenges for local initiatives.

When local initiatives are subjected to “substantive invalidity” challenges in pre-election review, the cost skyrockets to get the measure before the voters and this substantially thwarts the people’s right to the initiative power. The instant case provides this Court with an excellent opportunity to clarify, consistent with Coppernoll, the difference between a

⁵² There are no procedural challenges presented in this case.

⁵³ This Court addressed the issue of “legislative power to enact” in local initiatives reviewed after the decision in Coppernoll was issued when it found “an initiative is beyond the scope of the initiative power if the initiative involves powers granted by the legislature to the governing body of a city, rather than the city itself.” City of Sequim v. Malkasian, 157 Wn.2d 251, 261 (2006). A similar issue was addressed in 1000 Friends of Washington v. McFarland, 159 Wn.2d 165, 149 P.3d 616 (2006). Neither the Malkasian decision nor the McFarland decision addressed substantive invalidity.

“substantive invalidity” challenge and a “legislative power to enact” challenge for a local initiative.

1) The first issue presented for review asks this Court to determine if there is authority for the two local initiatives under review to be within the power of the corporate City to enact.

Does a corporate code city have authority either by Article XI, Section 11 of the Washington State Constitution (police power) or by RCW 35A.70.070(6) and Chapter 35.88 RCW to adopt strict local water purity standards for all public water systems serving the inhabitants of the City despite the fact that City’s legislative body operates one of the public water systems serving the City?⁵⁴

This issue meets the “substantial public interest” requirement set forth in RAP 13.4(b)(4) first because the authority set forth in this issue is the authority relied upon by the subject initiatives,⁵⁵ and it is important to all of the inhabitants of the City of Port Angeles as to whether this authority should allow them to vote on the initiatives. This Court can take judicial notice that the population of the City of Port Angeles for April 1, 2008 was estimated by the Office of Financial Management to be 19,170 people.⁵⁶ Second, it is a fundamental issue of broad importance to the inhabitants of all cities in the State to know if they can use this authority to set more strict local water purity standards for the public water supplies that serve their cities.

⁵⁴ RCW 35A.70.070(6) is in the Appendix at page A-41. Chapter 35.88 RCW is in the Appendix at pages A-43 through A-46.

⁵⁵ Supra, this brief at 9 (WHEREAS Clause).

⁵⁶ Table 4 in 2008 Population Trends for Washington State published September 24, 2008 on the State Office of Financial Management website at <http://www.ofm.wa.gov/pop/poptrends/default.asp>

Further, this issue presents the Court with an opportunity to distinguish between a “power to enact” and a “substantive invalidity” challenge for a local initiative for the first time since the Coppernoll decision was filed. It is of substantial public interest to have more clarity on this issue for local initiatives.

Also, the Court of Appeals decision related to this issue is likely in conflict with Coppernoll such that the criterion in RAP 13.4(b)(1) is met. See infra this brief at 18-19.

2) The second issue presented for review asks this Court to determine if a new ordinance that for the first time sets citywide local water purity standards under the authority described in Issue 1 above is a legislative action.

When a city has not previously adopted any local water purity standards for all public water systems serving the inhabitants of the City, are the first initiatives that establish such standards considered to be legislative, particularly when they regulate the use of public drinking water systems to medicate citizens?

This issue is of substantial public interest for some of the same reasons stated for Issue 1 above. It is of substantial public interest to the 19,170 residents of the City of Port Angeles because it addresses a necessary criterion to be met for this Court to issue a decree pursuant to RCW 35.17.290 to place the initiatives on the ballot. It is of substantial public interest to all inhabitants of all cities in the State because it will be relevant to whether they can adopt strict local water purity standards through initiative powers. It is of substantial interest to all citizens because it will determine if local initiatives can be used to prohibit anyone putting drugs and similar

substances into their public water supplies or whether such an issue can only be addressed at the State level.

2(a) An ancillary issue requests this Court to make a finding of fact based on admissions of the other parties to find that multiple public water systems serve the inhabitants of the City of Port Angeles.

As an ancillary issue, should this Court make a finding of fact based on admissions in the record that multiple public water systems serve the inhabitants of the City?

The review of this issue is left to the sound discretion of the Court. RAP 13.7(b). This issue is relevant to whether a citywide ordinance setting local standards for all public water systems is a legislative action despite the fact that the City's own public water system will have to comply with this citywide regulation.

3) The third issue presented for review asks this Court to determine if pre-election review, on whether a measure is legislative, should consider only the "fundamental and overriding purpose" of the initiative.

Should a court review only the "fundamental and overriding purpose" of an initiative when determining whether an initiative's purpose is legislative in nature?

This issue as well is of substantial public interest for some of the same reasons stated for Issues 1 and 2 above. It is of substantial public interest to the 19,170 residents of the City of Port Angeles because it clarifies the scope of pre-election judicial review to determine if the subject initiatives are legislative. It is of substantial public interest to all inhabitants in the State because it will be relevant to whether their local initiatives would be legislative.

Also, the Court of Appeals decision is likely in conflict with Coppernoll such that the criterion in RAP 13.4(b)(1) is met. Coppernoll states in determining whether the initiative exceeded the legislative power, the Court “looked at the ‘fundamental and overriding purpose’ of the initiative, rather than mere ‘incidental{s}’ to the overriding purpose. Coppernoll at 302. The Court of Appeals ruled that only pre-election analysis of the “power to enact” was limited to addressing the “fundamental and overriding purpose” of the initiative but the “legislative” pre-election analysis was not so restricted. Appendix pages A-5 through A-6. This conflict should be resolved by this Court clarifying that pre-election review of “legislative power” is to use the “fundamental and overriding purpose” for both the “legislative” test and the “power to enact” test. There is a substantial public interest in limiting the scope of pre-election review so that initiatives can reach the voters before there are legal battles over minor details. Therefore there is substantial public interest in this Court clarifying this issue.

4) The fourth issue presented for review directly addresses whether a court performing pre-election review may determine if local initiatives, if approved, would be consistent with federal or state laws.

Beyond determining that procedural requirements are met, that an initiative is legislative, and that the “fundamental and overriding purpose” is within the state’s or corporate city’s power to enact, may a court performing pre-election review determine whether local initiatives would be consistent with federal or state laws, if approved?

This issue is of substantial public interest because it determines the proper scope of local initiative pre-election review. The public needs clear limits on the scope of pre-election review for local initiatives so that

excessive costs for pre-election review do not thwart and destroy the ability to use the local initiative power. There is substantial public interest in being able to vote to express opinions using local initiatives and this issue addresses the size of the roadblocks that local jurisdictions and others can build to block use of this initiative power.

Also, the Court of Appeals decision is likely in conflict with Coppernoll such that the criterion in RAP 13.4(b)(1) is met. Coppernoll states that substantive invalidity pre-election challenges are not allowed in this State. Coppernoll at 297-98. The Court of Appeals decision bases its analysis of the instant pre-election review on principles that are in conflict with Coppernoll when it states,

Courts . . . review initiatives for whether they would be lawful if approved. . . . trial courts review the substance and nature of local initiatives before they are submitted to the voters because local initiatives must be consistent with federal and state laws.

Appendix page A-1 (emphasis supplied).

To review initiatives for whether they would be lawful, if approved, would be a substantive invalidity review. Coppernoll at 297-98. Under an extension of the principles in Coppernoll to a local initiative, there is not a determination of consistency with federal and state laws in pre-election review but rather there is only a determination of whether the measure is legislative and whether the corporate city has been given authority to enact the “fundamental and overriding purpose” of the measure. Coppernoll at 302. The Court of Appeals erred by supporting a substantive invalidity analysis in pre-election review. The Court of Appeals is giving false advice to the trial courts regarding pre-election review of local initiatives.

This issue is also of substantial public interest because, if substantial invalidity challenges are not allowed in pre-election review of local initiatives, the use of the initiative process by the public will be encouraged. It will be of particular interest to the 19,170 residents of the City of Port Angeles because it will facilitate getting the initiatives under review onto the ballot.

5) The fifth issue presented for review asks this Court to determine if a decree should issue to place one or both of the subject initiatives on the ballot.

For each of the initiatives reviewed by the Court of Appeals decision, is it legislative and is its "fundamental and overriding purpose" within the corporate city's power to enact such that this Court should issue a decree pursuant to RCW 35.17.290 to place one or both initiatives on the ballot?

This issue is of substantial public interest to the citizens' of the City of Port Angeles, because this would allow them to vote on the subject initiatives and express their first amendment rights. It is also of substantial public interest to many others around the state who would like to have the protections of similar initiative ordinances enacted in their cities or counties. A successful initiative in the City of Port Angeles would encourage others to use the initiative process in their own jurisdictions. Many citizens in the State would support an initiative ordinance that prohibits drugs and similar substances from being put into the public drinking water supply that serves their needs.

F. CONCLUSION

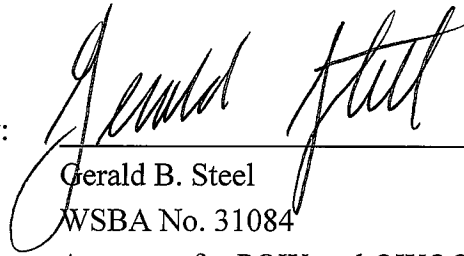
This court should accept review for the reasons indicated in Part E, reverse the decision of the Court of Appeals, and issue a decree pursuant to RCW 35.17.290 to place both initiatives on the ballot.

Dated this 25th day of September, 2008.

Respectfully submitted,

GERALD STEEL PE

By:



Gerald B. Steel
WSBA No. 31084
Attorneys for POW and OWOC

CERTIFICATE OF SERVICE

I certify that on the 25th day of September, 2008, I caused a true and correct copy of this certificate and the Petition for Review to be served on the following by first class mail:

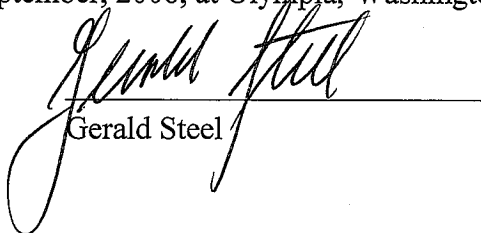
Counsel for Washington Dental Service Foundation, LLC:

Roger Pearce/P. Steven DiJulio
Foster Pepper PLLC
1111 Third Ave., Ste. 3400
Seattle, WA 98101-3299

Counsel for the City of Port Angeles:

William Bloor
Port Angeles City Attorney
P.O. Box 1150
Port Angeles, WA 98362

Dated this 25th day of September, 2008, at Olympia, Washington.



Gerald Steel

OWOC9b23.08

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DIVISION II

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STATE OF WASHINGTON

BY lp
DEPUTY

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

CITY OF PORT ANGELES,

Respondent,

v.

OUR WATER-OUR CHOICE; and PROTECT
OUR WATERS,

Appellants,

v.

WASHINGTON DENTAL SERVICE
FOUNDATION, LLC,

A Party in Interest,

No. 36935-4-II

PUBLISHED OPINION

PENoyAR, J. — Our Water-Our Choice and Protect Our Waters, appeal a trial court decision ruling their initiatives invalid. Both initiatives deal with controlling additives to Port Angeles' public water supply. Courts do not review initiatives for whether the proposed law is good public policy but do review initiatives for whether they would be lawful if approved. Unlike statewide initiatives, trial courts review the substance and nature of local initiatives before they are submitted to the voters because local initiatives must be consistent with federal and state laws. The trial court found the initiatives invalid because they were administrative in nature, they exceeded local initiative power because the legislature specifically delegated

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authority to operate the city water system to the city council, and the city had no power to enact ordinances such as those represented by the initiatives. We agree with the trial court and hold the initiatives invalid.

FACTS

In 2003 the Port Angeles City Council decided to fluoridate the City's water system at the urging of local health care professionals. In 2005, the council passed a motion approving a contract with the Washington Dental Service Foundation (WDSF). The contract provided that WDSF would construct and install a fluoridation system, and the city agreed to operate the system for 10 years or pay the foundation \$343,000 for the system. Clallam County Citizens for Safe Drinking Water challenged the council's decision that the fluoridation system was categorically exempt from environmental review under the State Environmental Policy Act. We ultimately upheld the council's decision in a previous appeal. *Clallam County Citizens for Safe Drinking Water v. City of Port Angeles*, 137 Wn. App. 214, 220, 151 P.3d 1079 (2007).

Meanwhile, each of the appellants in this case filed an initiative, the effect of which, if enacted, would prohibit the city from adding fluoride to the public water supply. The Our Water-Our Choice initiative, the "Medical Independence Act," would prohibit the city from adding to the water supply any substance designed to treat mental or physical disease or which would affect the function or structure of the human body. Appellant's Clerk's Papers (ACP) at 10-11. The Protect Our Waters initiative, the "Water Additives Safety Act," would criminalize the addition of any substance intended to treat or affect the mental or physical health of a person.

unless the Food and Drug Administration specifically approved the substance for use in public water systems.¹ ACP at 12-13.

Port Angeles (City) filed a declaratory judgment action, asking the trial court to rule that the initiatives were beyond the local initiative power. The Committees responded with a mandamus action seeking an order requiring the City to place the initiatives on the ballot. The parties agreed to consolidate the actions and try the case on undisputed facts.² The trial court ruled that the City's decision to fluoridate the water was administrative and thus beyond the local initiative power. The trial court also concluded that the initiatives exceeded the local initiative power because the legislature specifically delegated to the city council the authority to operate the city water system, and because the City had no power to enact ordinances such as those represented by the initiatives.

The Committees sought direct review by the Supreme Court, which declined to grant review and transferred the case to us.

ANALYSIS

I. PREELECTION REVIEW OF INITIATIVE

The Committees challenge the trial court's conclusions of law and its judgment based on those conclusions of law. At trial, the court determined that both initiatives were invalid because (1) they sought to regulate matters administrative in nature, (2) they improperly interfered with

¹ Our Water-Our Choice and Protect Our Waters will be collectively referred to as "Committees" in this opinion.

² Both county superior court judges recused themselves, and Judge Karlynn Haberly from Kitsap County was appointed as a visiting judge.

the City's legislatively granted right to operate the public water system, and (3) they exceeded the City Council's lawmaking authority.

A. Standard of Review

We review issues of law de novo. *In re Electric Lightwave, Inc.*, 123 Wn.2d 530, 536, 869 P.2d 1045 (1994).

Preelection review of an initiative is disfavored, but appropriate when the initiative is beyond the scope of the initiative power. *Coppernoll v. Reed*, 155 Wn.2d 290, 301, 119 P.3d 318 (2005). An initiative is generally within the initiative power if it meets two requirements: It is "legislative in nature," and it would enact a "law that is within the [state/city's] power to enact." *Futurewise v. Reed*, 161 Wn.2d 407, 411, 166 P.3d 708 (2007); *Coppernoll*, 155 Wn.2d at 302; *see also Philadelphia II v. Gregoire*, 128 Wn.2d 707, 719, 911 P.2d 389 (1996). Generally, an act is "legislative" if it creates a new policy or plan, while an act is only "administrative" if it "merely pursues a plan already adopted by the legislative body itself, or some power superior to it." *Bidwell v. City of Bellevue*, 65 Wn. App. 43, 46, 827 P.2d 339 (1992) (quoting *Seattle Bldg. & Constr. Trades Council v. City of Seattle*, 94 Wn.2d 740, 748, 620 P.2d 82 (1980)); *see also Heider v. City of Seattle*, 100 Wn.2d 874, 876, 675 P.2d 597 (1984); *Ruano v. Spellman*, 81 Wn.2d 820, 823, 505 P.2d 447 (1973).

Additionally, initiative rights do not extend to matters that state law delegates exclusively to local legislative authorities. *City of Sequim v. Malkasian*, 157 Wn.2d 251, 264, 138 P.3d 943 (2006); *Whatcom County v. Brisbane*, 125 Wn.2d 345, 350, 884 P.2d 1326 (1994). With respect to the power to enact a law, a state initiative must be within "the scope of the state legislative power." *Coppernoll*, 155 Wn.2d at 301. Local initiatives, in turn, must be within the *local* legislative power.

B. Fundamental and Overriding Purpose

The Committees urge us to hold that the trial court erred in its conclusions of law by reviewing more than just the “fundamental and overriding purpose” of the initiative to determine both whether they are legislative and whether their purpose is within the City’s power to enact. Appellant’s Br. at 20. The Committees argue that per *Coppernoll*, the court must limit its preelection inquiry to only the “fundamental and overriding purpose of the initiative”:

In *Philadelphia II*, we used a two part test to determine whether the initiative exceeded the legislative power. ‘[I]n order to be a valid initiative, [an initiative] must be legislative in nature and enact a law that is within the [jurisdiction’s] power to enact.’ . . . We looked at the ‘fundamental and overriding purpose’ of the initiative rather than mere ‘incidentals’ to the overriding purpose.

Coppernoll, 155 Wn.2d at 302 (citations omitted).

The Committees argue that *Coppernoll*’s use of “fundamental and overriding purpose” extends to the court’s entire review of an initiative, and that this standard applies not only to determine whether the initiative is within the city’s power to implement, but also to decide the legislative/administrative issue. *Coppernoll* does state that when reviewing a state-wide initiative to determine if it is in the state’s power to enact, the court should review only the “fundamental and overriding purpose” of the initiative. 155 Wn.2d at 303. A close reading of *Coppernoll* reveals that the court does not suggest that the same “fundamental and overriding purpose” test applies in determining whether an initiative’s purpose is legislative in nature. Instead, the opinion connects the “fundamental and overriding purpose” language solely to the

determination of whether the initiative is within the State's power to enact.³ 155 Wn.2d at 303.

This reading of *Coppernoll* is further confirmed by the Washington Supreme Court's subsequent decision in *Futurewise v. Reed*, where it states:

If an initiative otherwise meets procedural requirements, is legislative in nature, and its "fundamental and overriding purpose" is within the State's broad power to enact, it is not subject to preelection review.

161 Wn.2d at 411 (citing *Coppernoll*, 155 Wn.2d at 302-03).

In sum, an initiative must be both legislative in nature and within the locality's power to enact. After examining *Coppernoll* and *Futurewise*, it is clear that a court may review more than the "fundamental and overriding purpose" of the initiative when determining whether it is legislative or administrative in nature.⁴

C. The Committees' Initiatives are Administrative in Nature

Public water systems operate under a complex regulatory scheme. The federal Environmental Protection Agency (EPA), through its Office of Ground Water and Drinking Water, regulates all public water systems in the United States under the Safe Drinking Water Act

³ In *Coppernoll* there was no question that the initiative was legislative in nature. Thus, *Coppernoll* concludes: "In adherence to our prior decisions, we therefore restrict analysis of I-330 to determining if its 'fundamental and overriding purpose' is within the state's power to enact." *Coppernoll*, 155 Wn.2d at 303. The court makes no similar assertion for determination of whether an initiative is legislative or administrative.

⁴ Additionally, we note that the trial court did not make a finding as to the fundamental and overriding purpose of the initiatives, and the Committees did not request that the court make one. Only now do they assert that the fundamental purpose of their initiatives is to "prohibit pollution of all public water systems serving [Port Angeles] and to protect health and safety" of its citizens by either prohibiting the addition of medications to the water supply or by strictly monitoring those medications deemed appropriate. Appellant's Br. at 21. This is an assertion which the City challenges by noting that the purpose of the initiatives is to "halt fluoridation of the City's water supply." Resp't's Br. at 18. The trial court is the proper body to determine the initiatives' purpose, though, for our purposes, such a determination of fundamental and overriding purpose is unnecessary as the initiatives fail on other grounds.

(Act). The EPA sets national standards for drinking water, but generally, the direct oversight of public water systems is conducted by the states. Under the Act, a state can apply to implement the Act by agreeing to set standards at least as stringent as the federal standards and then enforce those standards.

The EPA granted Washington primacy to implement the Act (primacy has been granted to all but one state). See RCW 70.119A.080 (Department of Health ensures compliance with Safe Drinking Water Act). The State Board of Health is charged with regulating the purity of public water systems. RCW 43.20.050(2)(a). The legislature created a single exception, allowing the local health departments in every county with a population larger than 125,000 to “establish water quality standards for its jurisdiction more stringent than standards established by the state board of health,” should it choose to do so. RCW 70.142.040. This statute, however, does not apply here.⁵

Given this legal framework, the trial court’s determination that the Committees’ initiatives are administrative in nature is correct. Each initiative would regulate additives to Port Angeles’ public water system. The Committees argue that the initiatives merely add new restrictions not already found in the regulatory scheme and thus create new law (i.e. legislative, not administrative). This argument fails. Under the Department of Health’s regulatory scheme, the test here is whether the only decisions left are administrative in nature. *Ruano*, 81 Wn.2d at 824-25.

As we previously held in *Clallam County Citizens*, the City’s initial proposal to fluoridate its water was an action under a program administered by the Department of Health. 137 Wn.

⁵ Port Angeles is not a county and does not have more than 125,000 residents.

App. at 220. The Department of Health has authority under RCW 70.119.050 to adopt rules and regulations relating to public water systems. Decisions by local water companies about which chemicals to add to public water systems are administrative in nature because those decisions merely implement plans already adopted and supervised by the Health Department. WAC 246-290.⁶ Here, the City itself lacks the authority to add additional legal restrictions; thus, any decisions regarding the purity of public water systems are administrative in nature.

Additionally, the Committees argue that their initiatives are legislative in nature because the City itself does not have an ordinance expressly setting permissible maximum levels for drinking water additives and testing methods. Thus, they argue, their proposed initiatives must be legislative because they would set local maximum levels for fluoride and other additives as well as provide testing standards for those additives. This argument also fails. The standard is not whether the City itself has adopted a plan regulating the additives, but whether a plan has already been adopted "by the legislative body [of the city] itself or some power superior to it." *Heider*, 100 Wn.2d at 876. Here, both the Washington Legislature and the Washington Board of Health are powers superior to the City and their comprehensive regulations constitute a plan regulating additives to public drinking water. Thus, the City's actions implementing that general plan are administrative, not legislative. Since the initiatives seem to pursue/affect a plan already in place, they are administrative in nature and therefore invalid.

D. Initiatives Not Within the City's Power to Enact

The trial court ruled, additionally, that the initiatives were not within the City's power to enact. The Committees argue that the trial court erred in this conclusion as it should not have

⁶ This WAC describes all of the rules and regulations a public water system provider must comply with.

looked beyond the fundamental and overriding purpose of the initiatives in making its conclusion. They argue that by looking only at the overriding purpose, the measures are within the City's power to enact. The City disagrees, noting that though this State has adopted the method of reviewing only the fundamental and overriding purpose of an initiative—to determine whether a state has the power to enact a *state-wide* initiative—it has not extended this test to review of local initiatives.

The City is correct that the Supreme Court has not yet discussed limiting their preelection review of local initiatives (to determine whether they are within a city's power to enact) to only the fundamental and overriding purpose of the initiative. The City argues that we should not extend the "fundamental and overriding purpose" test to preelection review of local initiatives because of the basic differences in the right of initiative between state-wide and local initiatives.

Though the right to state-wide initiative is protected by our state constitution, there is no similar constitutional protection or right of local initiative. WASH. CONST. art. II, § 1. The legislature did not grant optional initiative powers in noncharter code cities, such as Port Angeles, until 1973. RCW 35A.11.080; 1973 Wash. Laws, 1st Ex. Sess. Ch. 81 § 1. Besides this basic difference, there is a practical difference between the two types of initiatives that warrants different types of preelection review.

Where a state-wide initiative creates new state law, binding upon all, a local initiative can only create new law that is not inconsistent with or inapposite to state and federal law. *Seattle Bldg. & Constr. Trades Council*, 94 Wn.2d at 747. Where substantive review of a state-wide initiative is inappropriate, a similar review for a local initiative is warranted given the greater restrictions placed upon them. The City properly cites to several cases where the Washington Supreme Court has undertaken a substantive review of local initiatives or referendums to

determine whether they were within the cities' power to enact. *See Seattle Bldg. & Const. Trades Council*, 94 Wn.2d 740 (local initiative purporting to prohibit bridge across Lake Washington in the City of Seattle was beyond the scope of the local initiative power because it was inconsistent with the exclusive method provided in chapter 47.52 RCW for determining location of limited access routes); *Close v. Meehan*, 49 Wn.2d 426, 430-32, 302 P.2d 194 (1956) (local initiative that would have changed the site for a proposed sewage treatment plant was beyond the scope of the local initiative power because it violated the sewage treatment plant planning requirements of RCW 80.40.070).

Though both cases are on point, they were both decided by the court well in advance of its decisions discussing preelection review of the fundamental and overriding purpose of initiatives.⁷ Furthermore, while differences between state-wide and local initiatives arguably dictate that a court should employ different methods of preelection review, in this case it is unnecessary for us to decide this point. Both initiatives clearly fail because they are administrative in nature and improperly infringe on rights delegated by the legislature to the city council.

E. Delegation to City Legislative Body

The trial court correctly determined that the initiative power does not extend to regulating public water systems because the legislature granted city legislative bodies the power to operate water utilities. *See* RCW 35A.11.020 ("The legislative body of each code city shall have all

⁷ The court decided *Philadelphia II* in 1996, *Coppernoll* in 2005, and *Futurewise* in 2007.

powers . . . [necessary for] operating and supplying of utilities and municipal services commonly or conveniently rendered by cities or towns.”).⁸

As the Washington Supreme court recently explained in *1000 Friends of Washington v. McFarland*, 159 Wn.2d 165, 174, 149 P.3d 616 (2006), when the legislature clearly delegates power to a local legislative body as opposed to the city as a whole, referendums and initiatives that attempt to limit or modify that power are beyond the initiative power. The *1000 Friends* court reaffirmed its holding in *Brisbane*, 125 Wn.2d 345, that the legislature granted the local legislative body the power to implement the Growth Management Act (GMA), and thus local citizens may not exercise the referendum or initiative power to limit, modify, or overturn a local legislative body’s actions under the act. *1000 Friends*, 159 Wn.2d at 174-75. Likewise, zoning decisions cannot be made by referendum or initiative because that power was expressly delegated to the local legislative body. *Lince v. City of Bremerton*, 25 Wn. App. 309, 312-13, 607 P.2d 329 (1980). The legislature in RCW 35A.11.020 clearly delegated the authority to operate a municipal water system to local legislative bodies rather than local municipal corporations. This delegation placed the operation of a municipal water system beyond the initiative power.⁹

The Committees urge us to discount the grant of power through RCW 35A.11.020, and instead find that the initiative is valid because the corporate city has the power to regulate water pollution through its police power. Chapter 35.88 RCW. Division One found a similar argument

⁸ It is well settled that in the context of statutory interpretation, a grant of power to a city’s governing body (“legislative body”) refers exclusively to the mayor and city council and not the electorate. *City of Sequim*, 157 Wn.2d at 266.

⁹ WAC 246-290 dictates how a municipal/public water system should be run. It further dictates water quality standards and testing procedures.

in *City of Seattle v. Yes for Seattle*, 122 Wn. App. 382, 93 P.3d 176 (2004), unpersuasive. Similarly, we are not persuaded by the Committees' argument in this case.

In *Yes for Seattle*, creek protection activists proposed an initiative to place development restrictions on property near creeks. The court held that this was a development regulation as defined by the GMA and that the legislature had granted authority to a city's legislative body to enact GMA development regulations, not to the city as a corporate body. 122 Wn. App. at 389. The activists argued that besides the GMA, there were broad grants of authority to cities generally for regulating creeks. For example, RCW 35.21.090 granted authority to cities to manage watercourses; RCW 35.31.090 granted authority to cities to regulate pollution in streams; and article XI, section 11 of the Washington Constitution granted authority to cities to make all regulations not inconsistent with state laws. *Yes for Seattle*, 122 Wn. App. at 392. Division One held that these grants of authority were not controlling, because the creek activists' proposed initiative would interfere with the legislature's *specific* grant of power to the legislative body of the city to enact development regulation. *Yes for Seattle*, 122 Wn. App. at 392.

As with the GMA, the legislative grant of authority to the legislative body of the city to "[operate] and [supply] utilities" is explicit. RCW 35A.11.020. The legal test for the validity of a local initiative is not whether some general law might supply authority to the city as a corporation, but whether the proposed initiative would "interfere with the exercise of a power delegated by state law to the governing body of the city." *Priorities First v. City of Spokane*, 93 Wn. App. 406, 411, 968 P.2d 431 (1998). Put another way, the people cannot deprive the City's legislative authority of the power to do what the constitution and/or a state statute specifically permit it to do. *King County v. Taxpayers*, 133 Wn.2d 584, 608, 949 P.2d 1260 (1997). To allow the initiatives to proceed on the basis of police power, or some other general theory, would

be to undermine the legislative grant of authority to the local legislative body and the complex regulatory scheme public water systems operate under.¹⁰

III. ADDITIONAL FINDINGS OF FACT

The Committees assign error to the trial court's failure to adopt an additional finding of fact at presentment on January 19, 2007. This proposed finding of fact, 3.20, reads: "There are other public water systems besides the Port Angeles municipal water system that provide water service in the City of Port Angeles." Appellant's Br. at 13. Instead of asking us to hold that the trial court abused its discretion in not including the finding of fact, the Committees encourage us to adopt the missing finding of fact on our own. We decline to address this as it would not change our decision that the initiatives are administrative and beyond the scope of initiative power.

IV. ELECTION SHOULD NOT BE ORDERED

Because the trial court ruled properly that the initiatives are invalid, we will not issue a decree pursuant to RCW 35.17.290 to place the initiatives on the ballot.

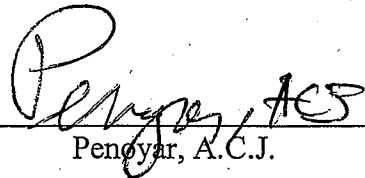
V. ATTORNEY FEES

The Committees request attorney fees and costs should they prevail on appeal. The City (and WDSF) does not make a request for fees. Since the City prevailed on appeal, it is entitled to costs and the Committees are not. RAP 18.1.

¹⁰ The Committees urge us to "harmonize" RCW 70.142.040 with chapter 35.88 RCW. Appellant's Reply Br. at 5. Given the explicit grant of power, harmonizing the statutes is unnecessary.

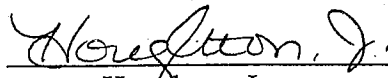
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We affirm the trial court.

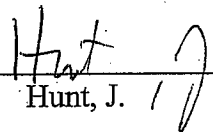


Pengyar, A.C.J.

We concur:



Houghton, J.



Hunt, J.

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

CITY OF PORT ANGELES,

Respondent,

v.

OUR WATER-OUR CHOICE,
and PROTECT OUR WATERS,

Appellant,


v.

WASHINGTON DENTAL
SERVICE FOUNDATION, LLC,

Respondent.

No. 36935-4-II

ORDER DENYING MOTION TO
RECONSIDER

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DIVISION II
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STATE OF WASHINGTON
BY  DEPUTY

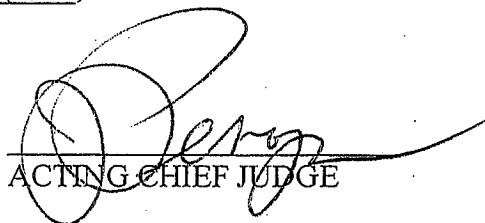
APPELLANTS move for reconsideration of the Court's decision terminating review,
filed **July 15, 2008**. Upon consideration, the Court denies the motion. Accordingly, it is

SO ORDERED.

PANEL: Jj. Penoyar, Houghton, Hunt

DATED this 27th day of August, 2008.

FOR THE COURT:


ACTING CHIEF JUDGE

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Sponsored by

PROTECT OUR WATERS

Ann Mathewson, Treasurer
PO Box 2423 Port Angeles, 98362
powowoc@yahoo.com

Ann Mathewson,
Treasurer

IMPROVING STANDARDS FOR MEDICATIONS
PUT IN PUBLIC DRINKING WATER

INITIATIVE PETITION FOR SUBMISSION TO THE PORT ANGELES CITY COUNCIL

TO: The City Council of the City Of Port Angeles:
We, the undersigned registered voters of the City of Port Angeles, State of Washington, respectfully request that the following ordinance be enacted by the City Council or, if not so enacted, be submitted to a vote of the residents of the City. The proposed title of the said ordinance is the
WATER ADDITIVES SAFETY ACT.

This initiative requires specific safety standards for any substance intended to act on the mind or body of people and added to public drinking water. FDA approval is required. No component of the additive may cause water to exceed existing federal standards determined to protect the health of everyone— infant to aged—for a lifetime. This ordinance does not regulate chemicals added to water to make water safe or potable.
The full text of the ordinance is on the reverse side of this petition.

WARNING: Every person who signs this petition with any other than his or her true name, or who knowingly signs more than one of these petitions, or signs a petition seeking an election when he or she is not a legal voter, or signs a petition when he or she is otherwise not qualified to sign, or who makes herein any false statement, shall be guilty of a misdemeanor.

Each of us for himself or herself says: I am a registered voter of the city of Port Angeles, State of Washington; and my residence address is correctly stated.

Signature as Registered to Vote e.g., Mary Doe, not Mrs. John Doe	PRINT NAME	Date 2008 m/day	Voting Address Number, Street	Port Angeles Zip	Phone
1					
2					
3					
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Return all petitions to Richard T. Smith, Media Contact for Protect Our Waters
82 Island View Rd. Port Angeles, WA 98362 email: rls@olympen.com [Front of Petition]

KW

A-16

WATER ADDITIVES SAFETY ACT

WHEREAS substances intended to treat or prevent human illness (including tooth decay) are by definition drugs which are mandated by Congress to be regulated by the Food and Drug Administration (FDA),

WHEREAS the FDA as well as the Washington State Department of Health and WAC 246-895-070 all require full disclosure of all components of drugs, which the City has yet to reveal for the formulation currently being added to its drinking water,

WHEREAS under Article 11 SECTION 11 of the State Constitution, RCW 35.88.020 and RCW 35A.70.070(6). The City Of Port Angeles may prescribe what acts shall constitute offenses against the purity of its water supply and exercise control over water pollution, and RCW 70.142.010 (2) expressly states that State and local standards for chemical contaminants may be more strict than the federal standards,

WHEREAS the citizens of Port Angeles, taking great pride in the pristine water of this area, desire to enact the following ordinance to ensure the healthfulness and aesthetic qualities of its water for all of its citizens including infants, the infirm and elderly.

Now, therefore we hereby ordain that the City of Port Angeles add to the Municipal Code:

SECTION 1

Intent: A public drinking water supply is a public resource essential to life and health. Drinking water additives intended to make water safe from microbiologic contaminants and to treat water to control corrosion and other physical properties of the water are accepted. However, the deliberate addition to drinking water of substances intended to treat the mind or body of persons in an entire population is highly controversial. This ordinance requires that any substances which are added with the intention of treating people, not the water, must meet existing health-based standards which protect the entire population, including infants, the infirm and the elderly over their lifetime.

SECTION 2

Definitions:

(A) Substance: A substance may be organic or inorganic in nature and includes drugs as defined in RCW 69.04.009, and RCW 69.41.010(9).

(B) Contaminant: A contaminant is a chemically or physically detectable quantity of any substance other than the named substance which is present in a concentrated formulation intended to be dispensed into drinking water. As used here, the term includes all components including by-products from source materials and their manufacturing process.

(C) "Contaminated with filth" is a term applicable to contaminants taken singly or as a group which are present in a product intended to be added to drinking water and which are present in quantities which would, when dispensed at the manufacturer's Maximum Use Level, allow the final consumer-ready product to exceed for one or more contaminants the Maximum Contaminant Level Goals ("MCLGs") as published by the U.S. Environmental Protection Agency ("EPA") pursuant to the Federal Drinking Water Act, 42 USC 300f et. seq.

SECTION 3

(A) A person or entity shall not add any substance to a public drinking water supply with the intent to treat or affect the physical or mental functions of the body of any person or which is intended to act as a medication for humans unless the manufacturer, producer, or supplier provides proof that the substance is specifically approved by the United States Food and Drug Administration ("FDA") for safety and effectiveness with a margin of safety that is protective against all adverse health and cosmetic effects at all dosage ranges consistent with unrestricted human water consumption.

(B) It is prohibited to add to a public water supply any substance which is contaminated with filth. No component of the additive mixture shall cause the drinking water to exceed the "MCLGs" determined for that component.

(i) For purposes of determining the specific contaminant contribution under paragraph (B), each shipment of the substance must include its own certificate of independent analysis provided by the manufacturer, producer, or supplier. This certificate must reveal all detectable components in the specific batch of product pursuant to WAC 246-895-070(9). Analysis of the contaminant contribution of each component shall be based on conventional tests made of the undiluted product at the application rate stated by the manufacturer to be the Maximum Use Level. The substance shall not be added to drinking water if it contains any contaminant at a concentration that will cause the drinking water to exceed the MCLG, which is the scientific health-based point of safety established by the U.S. EPA for lifetime consumption of that contaminant in drinking water.

(C) The provisions of this ordinance do not apply to substances which are added to treat water to make water safe or potable PROVIDED that water treatment substances which contain fluoride in amounts sufficient to elevate levels of fluoride in the finished water by more than 0.1 parts per million above background levels shall not be exempted by this subsection.

SECTION 4

Violations of this ordinance constitute a public nuisance and violation of this ordinance shall be punishable as a gross misdemeanor under RCW 70.54.020.

SECTION 5

(A) To the maximum extent permitted by law, this ordinance takes precedence over any conflicting provisions in the laws, regulations, resolutions, or other ordinances of the City of Port Angeles. It does not prohibit fluoridation provided the substance used for that purpose meets the approval of FDA and the stringent safety standards as prescribed herein.

(B) This ordinance is to take effect thirty days after certification of the election in which it was approved by the Port Angeles electorate. Additions of hexafluorosilicic acid solution to the municipal water supply will then cease until proof is publicly available that the substance meets all the criteria set by this ordinance.

SECTION 6

If any provision, phrase, or part of this ordinance or its underlying legal basis, or the application to any person or circumstance is held invalid, the remainder of the provisions of this ordinance or the application thereof shall be given effect insofar as possible, and to this end the provisions of this Act are severable.

[Back of Petition]

A-17

Sponsored by
OUR WATER— OUR CHOICE!

P O Box 2423, Port Angeles, WA 98362
Campaign Manager Lynn Warner— lynnwa@olympen.com

B-250
(R-2)

MASS MEDICATION IS FORCED MEDICATION

Vote
☒ **YES FOR CHOICE**

INITIATIVE PETITION FOR SUBMISSION TO THE PORT ANGELES CITY COUNCIL

TO: The City Council of the City Of Port Angeles:
We, the undersigned registered voters of the City of Port Angeles, State of Washington, respectfully request that the following ordinance be enacted by the City Council or, if not so enacted, be submitted to a vote of the residents of the City. The proposed title of the said ordinance is the
MEDICAL INDEPENDENCE ACT.

The full text of the ordinance is on the reverse side of this petition.

THE INTENT OF THIS ORDINANCE is to prohibit medication of people through public drinking water supplies while allowing necessary treatment of water to make it safe to drink. People claim the right to control what medication is given them, and a right to their fair share of a public water supply which is free of medication.

WARNING: Every person who signs this petition with any other than his or her true name, or who knowingly signs more than one of these petitions, or signs a petition seeking an election when he or she is not a legal voter, or signs a petition when he or she is otherwise not qualified to sign, or who makes herein any false statement, shall be guilty of a misdemeanor.

Each of us for himself or herself says: I have personally signed this petition; I am a registered voter of the city of Port Angeles, State of Washington and my residence address is correctly stated.

Signature as Registered to Vote e.g., Mary Doe, not Mrs. John Doe	PRINT NAME	Date 2006 m/day	Voting Address Number, Street	Port Angeles Zip	Phone
1					
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15					

Return all petitions, preferably by October 15, 2006 to:
OUR WATER — OUR CHOICE! P O BOX 2423 Port Angeles, WA 98362
powowoc@yahoo.com

[Front of Petition]

A-18

Medical Independence Act

SECTION 1. Intent. Over the objection of many of its citizens, the City Council approved the addition of hexafluorosilicic acid (a form of fluoride) to the City's public drinking water for the express purpose of reducing tooth decay. This action has forced the entire community either to submit to this medication for tooth decay, to remove it as best individuals can, or to not use the water. Extraordinary effort and expense are required to escape being medicated by this substance which is absorbed even through unbroken skin. For many, effective avoidance is an economic and practical impossibility resulting in their enforced medication. The citizens herewith determine that access to a public water supply constitutes a property right shared by all users of that water supply. They find that the property rights of persons to whom medicated water is unacceptable are impaired by addition of medication to the common supply of water and that this is a taking which has not been compensated in any way. Furthermore, the citizens declare that the right of all adult and mentally competent citizens to control their own medical care and the right to informed consent for medical treatment are essential to their pursuit of life and liberty. The citizens of Port Angeles now declare that public water supplies should not be used to medicate citizens.

SECTION 2. It shall be unlawful for any person, agent, or any public water system to put or continue to put any product, substance, or chemical in public water supplies for the purpose of treating physical or mental disease or affecting the structure or functions of the body of any person, or with any other intent of acting in the manner of a preventive or treating medication or drug for humans or animals.

SECTION 3. This ordinance does not apply to substances which are added to treat water to make water safe or potable such as use of agents for disinfection, or corrosion control PROVIDED that water treatment substances contaminated with fluoride in amounts sufficient to elevate levels of fluoride in the finished water by more than 0.1 parts per million above those background levels which occur naturally in the raw supply water shall be prohibited.

SECTION 4. In case of conflict with any law, regulations, resolutions, or ordinances of the City of Port Angeles, this ordinance shall prevail to the maximum extent allowed by law. The action by the City Council taken Feb. 18, 2003 to approve addition of fluoride to the municipal water supply is hereby repealed.

SECTION 5. This ordinance shall take effect thirty days after certification of the election at which it was approved by the Port Angeles electorate. Additions of hexafluorosilicic acid solution to the municipal water supply will then cease.

SECTION 6. If any provision, phrase, or part of this ordinance or its underlying legal basis, or the application to any person or circumstance is held invalid, the remainder of the provisions of this ordinance or the application thereof shall be given effect insofar as possible, and to this end the provisions of this ordinance are severable.

[Back of Petition]

A-19

The Honorable M. Karlynn Haberly
Kitsap County Superior Court
Trial Date: Monday, December 11, 2006, 9:00 a.m.

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR CLALLAM COUNTY

CITY OF PORT ANGELES,

Plaintiff,

v.

OUR WATER-OUR CHOICE, and
PROTECT OUR WATERS,

Defendants,

v.

WASHINGTON DENTAL SERVICE
FOUNDATION, LLC,

A Party in Interest,

No. 06-2-00828-9

(Having been consolidated with
No. 06-2-00823-8)

FINDINGS OF FACT, CONCLUSIONS
OF LAW, AND JUDGMENT

OUR WATER-OUR CHOICE, and
PROTECT OUR WATERS,

Plaintiffs/Petitioners,

v.

PORT ANGELES CITY CLERK, CITY OF
PORT ANGELES, and WASHINGTON
DENTAL SERVICE FOUNDATION, LLC,

Defendants/Respondents

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND
JUDGMENT - 1

ORIGINAL

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PHONE (206) 447-4400 FAX (206) 447-9700

1 **1. JUDGMENT SUMMARY**

2 PREVAILING PARTIES: City of Port Angeles
Washington Dental Service Foundation, LLC

3 ATTORNEYS FOR
4 PREVAILING PARTIES William E. Bloor, City Attorney
321 East Fifth Street/PO Box 1150
5 Port Angeles WA 98362-0217
6 For City of Port Angeles
7 Foster Pepper PLLC by Roger A. Pearce and
8 P. Stephen DiJulio
1111 Third Avenue, Suite 3400
9 Seattle WA 98101-3299
For Washington Dental Service Foundation, LLC

10 NON-PREVAILING PARTIES Our Water – Our Choice
Protect Our Waters

11 ATTORNEY FOR
12 NON-PREVAILING PARTIES Gerald Steel, PE
7303 Young Road NW
Olympia WA 98502

13 SYNOPSIS OF JUDGMENT: Declaratory Judgment GRANTED in favor of
14 Prevailing Parties that the initiatives entitled
15 Medical Independence Act and Water Additives
16 Safety Act are beyond the scope of the local
initiative power of the City of Port Angeles, and
that the City has no duty to place said initiatives on
the ballot;

17 Writ of Mandamus sought by Non-Prevailing
18 Parties is DENIED;

19 Complaint for Writ of Mandamus and Petition
20 Pursuant to RCW 35.17.290 brought by Non-
Prevailing Parties is DISMISSED with prejudice.

21 AMOUNT OF MONETARY
22 JUDGMENT \$0.00 (Not Applicable)

23 ATTORNEYS' FEES AND COSTS \$0.00 (Not Requested by Prevailing Parties)

24 ////

25 ////

26 ////

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND
JUDGMENT - 2

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2. INTRODUCTION

2.1 Consolidated Cases. This case consists of two consolidated actions involving initiative petitions filed by political action committees Our Water - Our Choice and Protect Our Waters with the City Clerk of the City of Port Angeles. The City of Port Angeles filed a Complaint For Declaratory Judgment under Clallam County Cause No. 06-2-00823-8, in which the City requested a declaration that the initiatives are beyond the scope of the initiative power for noncharter Code cities such as the City of Port Angeles. Protect Our Waters and Our Water - Our Choice filed a Complaint For Writ Of Mandamus and Petition Pursuant to RCW 35.17.290 and also filed a Verified Application For Peremptory Writ Of Mandamus To The Port Angeles City Clerk And Request For Further Relief ("Verified Application") under Clallam County Cause No. 06-2-00828-9, in which the political action committees requested the Court to find the initiative petitions legally sufficient and to order the City to hold an election for the purpose of voting on the ordinances proposed in the initiatives. The Court consolidated the two actions (Cause Nos. 06-2-00823-8 and 06-2-00828-9) for all purposes under the later-filed cause number (Cause No. 06-2-00828-9).

2.2 Hearing On The Merits. At the hearing on the merits on December 11, 2006, the City was represented by William E. Bloor, City Attorney for the City of Port Angeles, Our Water - Our Choice and Protect Our Waters were represented by Gerald Steel, P.E., attorney at law, and the Washington Dental Service Foundation was represented by Roger A. Pearce and Foster Pepper PLLC. After its review of the evidence submitted in the form of declarations by the parties, the briefing of the parties, the arguments of counsel at the hearing on the merits, and the pleadings and papers in the court record, the Court entered its oral ruling on December 11, 2006, and now enters the following:

3. FINDINGS OF FACT

3.1. In September 2006 shortly after the two actions were filed, the parties entered into a Stipulation and Order (1) Consolidating Actions, (2) Permitting Intervention, (3) Forwarding

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND
JUDGMENT - 3

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1 Initiative Petitions to County Auditor, and (4) Setting Hearing Schedule and Trial Date
2 ("Stipulation and Order"). In the Stipulation and Order, the Court consolidated the two actions
3 for all purposes; joined Washington State Dental Service Foundation as a party defendant,
4 ordered that the City had no further legal obligations with respect to the initiative petitions (the
5 City had stipulated to forward the petitions to the County Auditor for determination of
6 sufficiency) pending the final order of this Court in the consolidated cases, ordered that the
7 parties would follow an agreed-upon briefing schedule, and agreed to schedule a hearing on the
8 merits as soon as possible after November 27, 2006.

9 3.2. Procedurally, each of the parties submitted opening, response and reply briefs
10 accompanied by declarations and exhibits. The Stipulation and Order contemplated a hearing on
11 the merits, which was scheduled for December 11, 2006, and a final order. Accordingly, the
12 Court treats the hearing as a trial on undisputed facts. Even though the parties did not submit a
13 set of stipulated facts, the following relevant facts were undisputed and, *based on these*
14 *undisputed facts below,* the initiative petitions filed by Our Water-Our Choice and Protect Our
15 Waters (attached to those parties' Verified Application For Peremptory Writ), and the
16 Agreement Regarding Gift of Fluoridation System (attached to the City's Complaint For
17 Declaratory Judgment), the Court *enters* ~~may enter~~ the final judgment herein.

18 3.3. The City of Port Angeles (the "City") is a Code city operating under RCW Title
19 35A. Pursuant to the authority in Title 35A, the City owns and operates a drinking water utility.
20 RCW 35.11.020.

21 3.4. Our Water – Our Choice ("OWOC") is a political action committee registered
22 with the Washington Public Disclosure Commission, listing an address of 1114 E. 4th Street, Port
23 Angeles WA 98362. Lynn Warber is listed as "campaign chair" of OWOC. Lynn Warber is a
24 registered voter and taxpayer of the City, and is the person who filed the proposed Medical
25 Independence Act with the Port Angeles City Clerk.
26

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND
JUDGMENT - 4

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1 3.5. Protect Our Waters ("POW") is a political action committee registered with the
2 Washington Public Disclosure Commission, listing an address of 1923 W. 6th Street, Port
3 Angeles, WA 98362. Ann Mathewson is listed as treasurer of POW. Ann Mathewson is a
4 registered voter and taxpayer of the City, and is the person who filed the proposed Water
5 Additives Safety Act with the Port Angeles City Clerk.

6 3.6. Washington Dental Service Foundation, LLC, ("WDSF") is an ^a ~~an essential~~ party to
7 these actions. WDSF has a contract interest that relates to the subject matter of the actions. The
8 contract is between the City and WDSF and is titled Agreement Regarding Gift of Fluoridation
9 System (the "Agreement").

10 3.7. ~~In February 2003, the Port Angeles City Council held a lengthy public hearing on~~
11 ~~the question of whether to fluoridate the City's drinking water supply. At least 45 people gave~~
12 ~~oral testimony, and voluminous documents were presented to the City Council.~~ On February 18,
13 2003, the City Council passed a motion to approve fluoridation of the City's water supply.

14 3.8. Subsequently, on March 1, 2005, the City Council approved, by motion, a
15 contract between the City and WDSF – the Agreement. Under the Agreement, WDSF agreed to
16 pay for the design, construction and installation of a fluoridation system and then transfer the
17 system to the City. For its part, the City agreed that it would fluoridate the Port Angeles' public
18 water supply for a continuous ten (10) year period. In the event the City fails to meet its
19 obligations under the Agreement, the City is to repay up to four hundred thirty-three thousand
20 (\$433,000) to WDSF for the costs of design, construction, and installation of the fluoridation
21 system and could be liable for other expenses.

22 3.9. WDSF delivered the fluoridation system to the City on May 18, 2006, and the
23 City is currently using the system to fluoridate the City's public water supply.

24 3.10. On September 8 and September 12, 2006, OWOC and Lynn Warber filed
25 initiative petitions to have the City Council enact an ordinance or in the alternative have the city
26 residents vote on the "Medical Independence Act." On September 8 and September 11, 2006,

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND
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1 POW and Ann Mathewson filed initiative petitions to have the City Council enact an ordinance
2 or in the alternative have the city residents vote on the "Water Additives Safety Act."

3 3.11. Following the filing of the initiative petitions, on September 13, 2006, the City
4 Council conducted a public meeting to consider the action to be taken. The procedure set out in
5 the state statutes is that the City will deliver the petitions to the County Auditor to verify
6 signatures. Then, RCW 35A.11.110 and 35.17.260 provide that in the event the Clallam County
7 Auditor certifies that an initiative petition has received the requisite number of valid signatures,
8 the City Clerk will transmit the initiative to the City Council for introduction. The Council may
9 either: (1) adopt the initiative as an ordinance, or (2) reject it and order it to be placed on the
10 ballot no later than the next election.

11 3.12. The City Council elected not to send the initiative petitions to the County Auditor,
12 but rather to ask for a declaratory judgment regarding the validity of the two initiative petitions.

13 3.13. On September 18, 2006, the City filed an action for a declaratory judgment under
14 Clallam County Superior Court Cause No. 06-2-0823-8. On September 19, 2006, the initiative
15 backers, POW and OWOC, filed a separate action under Clallam County Superior Court Cause
16 No. 06-2-00828-9 in which they sought, among other things, relief that would require the City
17 Clerk to deliver the initiative petitions to the County Auditor for validation of signatures.

18 3.14. In the days following the filing of the two lawsuits, the parties reached agreement
19 on the procedure to be followed. The agreement was intended to facilitate the timely
20 presentation of the substantive issues to the Court for a ruling. The agreed Stipulation and Order
21 was filed in this action on September 26, 2006.

22 3.15. In 1924 the City made the decision to establish a municipal water system. In
23 1924 the City purchased the water system from the North Pacific Public Service Company of
24 Tacoma. Since then, the City has operated its municipal water system as a proprietary function
25 of the City. In the course of doing so, the City, administratively, has made numerous significant
26 and substantial changes to the system and the water supplies. These include, among others,

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND
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1 changing the source of water from Ennis Creek to Morse Creek; changing the source again from
2 Morse Creek to the Elwha River; negotiating settlements with the EPA and Department of Social
3 and Health Services (now Department of Health (DOH)) over issues of water quality and water
4 treatment; modifying, and sometimes not modifying, treatment facilities; and addressing
5 measures to be taken when the water supply was reclassified from "ground water" to "ground
6 water under the influence of surface water."

7 3.16. In summary, since 1924 the City has made numerous significant and substantial
8 decisions relating to its municipal water system. It purchased the system, and then moved major
9 components from time to time. It changed primary sources of water. It has chosen to treat, and
10 not treat, the water for various purposes; and it has chosen among alternative means of
11 complying with state regulations for operating the facility.

12 3.17 The OWOC and POW initiative petitions signed by registered voters were
13 properly submitted to the City Clerk on September 8, 2006. As of September 18, 2006, the City
14 Clerk had failed to transmit the OWOC and POW initiative petitions to the County Auditor.

15 3.18. Pursuant to the Stipulation And Order, on or about September 26, 2006, the City
16 Clerk forwarded the OWOC and POW initiative petitions to the County Auditor for a
17 determination of sufficiency, and on October 7, 2006, the County Auditor found the initiative
18 petitions to be sufficient and sent letters back to the City Clerk stating, "[t]he required number of
19 signatures has been met, thus allowing submission to the voters at an election to be determined."

20 3.19. The City of Port Angeles is not a county and is not 125,000 or greater in
21 population.

22 4. CONCLUSIONS OF LAW

23 4.1. There are three, independent tests considered by the Court to determine whether
24 the OWOC and POW initiatives are within the scope of the local initiative power and therefore
25 proper to go forward to a vote of the voters of Port Angeles.
26

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND
JUDGMENT - 7

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1 4.1.1. The first test is whether the subject matter of the initiatives deals with
2 legislative rather than administrative matters. Only legislative matters are within the initiative
3 power.

4 4.1.2. The second test is whether, even if the subject matter is legislative, the
5 authority to deal with that subject matter was expressly delegated to the legislative body of the
6 City rather than to the City as a corporate body. Matters expressly delegated to the local
7 legislative body are not within the local initiative power.

8 4.1.3. The third test is whether the subject matter of the initiative exceeds the
9 legislative authority of the City. Matters exceeding the local legislative authority are likewise
10 outside the local initiative power.

11 4.2. With respect to the first test, the Court concludes that each initiative seeks to
12 regulate matters that are administrative in nature, which is the operation of a municipal water
13 system, including operation and supply of water through that municipal water system.
14 Accordingly, the initiatives are beyond the scope of the local initiative power.

15 4.3. With respect to the second test, under RCW 35A.11.020, the state Legislature has
16 vested within the City of Port Angeles legislative body, which is the Port Angeles City Council,
17 the authority to operate and supply utilities. In this case, the operation of the municipal water
18 system utility is at issue. The Court concludes that these initiatives interfere with the City's
19 operation of its public water system, and seek to regulate the operation of that municipal water
20 system. For this second reason, the initiatives are beyond the scope of the local initiative power.

21 4.4. The third test is whether either or both of these initiatives exceed the authority of
22 the City Council to enact laws. The Court concludes that both initiatives are beyond that
23 authority. The language of each initiative clearly seeks to direct the City's operation of the
24 municipal water system and manner of supply of public water. The Medical Independence Act
25 seeks to control substances that are put into the water, which is an administrative matter for the
26 City. Both of the initiatives conflict with federally mandated and state administered regulation

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND
JUDGMENT - 8

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1 of public drinking water. In particular, the state has preempted the field for setting maximum
2 permissible concentrations for additives to drinking water. It is the State Board of Health that is
3 legislatively mandated to set standards for contaminants in drinking water based on best
4 available scientific information. RCW 70.142.010 - .030. Only certain local governments may
5 adopt stricter standards -- the local health department serving counties with populations of
6 125,000 or greater may adopt more strict standards, again based on best scientific information.
7 RCW 70.142.040. Because the City is not a county of 125,000 or greater in population, it does
8 not have the authority to adopt stricter standards than the State Board of Health maximum
9 allowable concentration standards; and because the initiatives would adopt stricter standards than
10 the State Board of Health standards, the ordinances proposed by the initiatives are beyond the
11 scope of the local initiative power.

12 4.5. The Water Additives Safety Act seeks to impose an obligation on the United
13 States FDA to approve substances that are added to public drinking water systems. The City has
14 no authority to direct the FDA to regulate such substances. This also exceeds the authority of the
15 City to regulate public water systems.

16 4.6. The City does not have authority to regulate public drinking water in a manner
17 inconsistent with the controlling state and federal regulation. ~~The Medical Independence Act is~~
18 ~~ambiguous. An example is its provisions in Sections 2 and 3 that relate to making water "safe"~~
19 ~~and whether certain substances are added for "treating" versus "preventing" disease. The~~
20 ~~ambiguities are not themselves determinative, but despite them, it is clear that the Medical~~
21 ~~Independence Act is intended to create new regulations that are, to some extent, inconsistent with~~
22 ~~state and federal law regulating water quality and water additives. As such it is beyond the scope~~
23 ~~of the legislative authority of the City and is invalid.~~

24 4.7. The Medical Independence Act would also establish a new property right of
25 access to a public water supply, and would transfer that right to all persons using a public water
26 supply. This is in violation of the Washington State Constitution, Article 8, Section 7, which

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND
JUDGMENT - 9

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1 prohibits gifts of City property without any consideration. The Court notes that this could also
2 subject the City to claims if this new property right affected the security of bond holders for
3 improvements to the City water system. But it is enough for purposes of this litigation to hold
4 that the initiatives would violate the Washington Constitution.

5. JUDGMENT

6 Based on the foregoing findings of fact and conclusions of law, it is ORDERED,
7 ADJUDGED and DECREED as follows:

8 5.1. Declaratory judgment is **GRANTED** in favor of the City of Port Angeles that the
9 Medical Independence Act and the Water Additives Safety Act are invalid as exceeding the
10 scope of the local initiative power because the initiatives affect administrative rather than
11 legislative matters, because the initiatives deal with matters delegated specifically to the
12 legislative body of the City of Port Angeles, and because the ordinances proposed by the
13 initiatives are beyond the authority of the City of Port Angeles to enact.

14 5.2. The Writ of Mandamus sought by the Our Water – Our Choice and Protect Our
15 Waters political action committees is DENIED and the Complaint For Writ Of Mandamus And
16 Petition Pursuant to RCW 35.17.290 brought by Our Water – Our Choice and Protect Our
17 Waters is DISMISSED with prejudice because the proposed initiatives are invalid. Accordingly,
18 there is no requirement for the City of Port Angeles to act to place the initiatives on the ballot.

19 5.3. The Court finds no need to rule on the motion to dismiss or motion for judgment
20 on the pleadings brought by Washington Dental Service Foundation, LLC, as those motions are
21 subsumed in the foregoing ruling on the merits as to all issues presented to the Court.

22 DATED this 19th day of January, 2007.

23
24
25 M. KARLYNN HABERLY
26 Superior Court Judge

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND
JUDGMENT - 10

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1
2 Presented by:

3
4 *Roger A. Pearce for*
5 WILLIAM E. BLOOR, WSBA No. 4084
6 City Attorney for City of Port Angeles
per permission

7 FOSTER PEPPER PLLC

8
9 *Roger A. Pearce*
10 P. Stephen DiJulio, WSBA No. 7139
11 Roger A. Pearce, WSBA No. 21113
Attorneys for Washington Dental Service Foundation, LLC

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FINDINGS OF FACT, CONCLUSIONS OF LAW, AND
JUDGMENT - 11

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3766
Sig

AGREEMENT REGARDING GIFT OF FLUORIDATION SYSTEM

This Agreement Regarding Gift of Fluoridation System (the "Agreement") is entered into as of March 1, 2005 (the "Effective Date"), by and between Washington Dental Service Foundation, LLC, a Washington limited liability company ("WDSF"), and the City of Port Angeles, Washington, a municipality (the "City") (collectively referred to herein as the "Parties").

RECITALS

WHEREAS, WDSF is a single member limited liability company of which Washington Dental Service, an organization exempt from federal income tax within the provisions of Section 501(c)(4) of the Internal Revenue Code of 1986, as amended (the "Code"), is the sole member;

WHEREAS, WDSF is organized and operated for charitable purposes including improving the oral health of Washington residents by facilitating the implementation of community fluoridation projects throughout the State of Washington;

WHEREAS, the City is a political subdivision of the State of Washington within the meaning of Section 170(c)(1) of the Code;

WHEREAS, in furtherance of WDSF's charitable mission to improve the oral health of Washington residents, WDSF wishes to make a gift of a fluoridation system (the "System") to the City for the purpose of fluoridating the Port Angeles public water supply, in accordance with the terms and conditions set forth herein;

WHEREAS, the Port Angeles City Council (the "City Council") has determined that it is in the best interests of the City's residents to fluoridate the Port Angeles public water supply, to accept the gift of the System, and to proceed with implementation of a fluoridation system for the City's public water supply;

WHEREAS, the City desires to accept WDSF's gift of the System, in accordance with the terms and conditions set forth herein;

WHEREAS, contemporaneously with this Agreement, WDSF intends to enter into a design-build agreement (the "Design-Build Agreement") with CH2M Hill Constructors, Inc., a Washington corporation ("CH2M Hill"), for the design, construction and installation of the System on land owned by the City;

WHEREAS, WDSF will be responsible for paying the Contract Price for the cost of the design, construction and installation of the System;

WHEREAS, the City is not causing such design, construction and installation to be performed by CH2M Hill through any separate contract or agreement;

WHEREAS, the City is not causing the design, construction and installation of the System to be performed by WDSF through any separate contract or agreement;

WHEREAS, no part of the cost of the design, construction or installation of the System shall

ever become an obligation of the City; the design, construction and installation of the System will not be executed at the cost of the City and will not by law give rise to a lien or charge on any property of the City;

WHEREAS, it is the Parties' expectation that the System be operational no later than March 1, 2006; and

WHEREAS, WDSF and the City have determined that entering into this Agreement will further the charitable and public service missions of the Parties.

NOW, THEREFORE, in consideration of the mutual promises, covenants, conditions and performances set forth herein, the Parties recite, covenant and agree as follows:

AGREEMENT

ARTICLE I. PURPOSE

Section 1.1 Purpose. The purpose of this Agreement is to establish the terms and conditions of WDSF's gift of the System to the City, and the City's acceptance of the gift. The City will use the System to implement the City's community water fluoridation project.

ARTICLE II.

SYSTEM TRANSFER

Section 2.1 Gift of System. Subject to and upon the terms and conditions of this Agreement, WDSF agrees and covenants to give, donate, and transfer to the City, at no cost, all of WDSF's right, title and interest in and to the System. WDSF shall transfer the System to the City (a) upon Substantial Completion of the System by CH2M Hill, (b) or otherwise pursuant to Section 5.2 below; provided however, that WDSF shall have ensured prior to any transfer that the System is free of all liens, claims, demands or encumbrances of any kind, legal or equitable that prevent or could prevent WDSF from transferring the System to the City on a free and clear basis. For purposes of this Agreement, the term "Substantial Completion" shall have the same meaning as is assigned in the Design-Build Agreement.

Section 2.2 City's Acceptance of Gift. Subject to and upon the terms and conditions of this Agreement, and except as provided in Section 2.3, the City hereby accepts WDSF's gift of the System and from and after WDSF's transfer of the System to the City at Substantial Completion, or otherwise pursuant to Section 5.2 below, agrees to assume, perform, and fully discharge when due any and all of the liabilities and obligations relating to the operation and ownership of the System, other than those relating to WDSF's payment of the Contract Price, as that term is defined Section 6.2 below, for the costs of the design, construction and installation of the System (the "Assumed Liabilities"). The term "liabilities" includes, but is not limited to, any and all debts, liabilities, and obligations, whether accrued or fixed, absolute or contingent, matured or unmatured, determined or determinable, known or unknown, including those arising under any federal, state, local or foreign statute, law, ordinance, regulation, rule, code, order, writ, stipulation, permit, or other government requirement and those arising under any trade payable, other accounts payable, assigned contract, or

other contract.

Section 2.3 Excluded Liabilities. Assumed Liabilities shall not include WDSF's obligation to pay to CH2M Hill the Contract Price for the design, construction and installation of the System. This Section 2.3 does not, however, in any way limit WDSF's ability to recover any amounts due to WDSF from the City under Section 5.9 or Article VII of this Agreement.

Section 2.4 DISCLAIMER OF WARRANTIES. WDSF IS PROVIDING THE GIFT "AS IS" and "WHERE IS" and WITHOUT WARRANTY OF ANY KIND. WDSF EXPRESSLY DISCLAIMS ALL WARRANTIES, INCLUDING WITHOUT LIMITATION ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT, AS WELL AS ANY WARRANTY WHATSOEVER WITH RESPECT TO THE MARKETABILITY OR SITE CLASSIFICATION OF THE SYSTEM.

Section 2.5 City Responsibility for System Results and Condition. The City acknowledges that, as between WDSF and the City, after transfer of the System to the City and acceptance of the System by the City, the City has full responsibility for the use and results obtained from the System, and that the entire risk of the System and any use, nonuse or failure of the System is with the City. Without limiting the generality of the foregoing, WDSF will have no liability with respect to: (A) the quality, nature, adequacy and physical condition of the System; (B) the existence, quality, nature, adequacy, and physical condition of utilities serving the System (C) the System's use, habitability, merchantability, or fitness, suitability, value or adequacy of the System for any particular purpose; (D) the zoning or other legal status of the System or any other public or private restrictions on use of the System; (E) the compliance of the assets or the System's operation with any applicable codes, laws, regulations, statutes, ordinances, of any governmental or quasi-governmental entity or any covenants, conditions and restrictions applicable to the System or the fluoridation of a water supply; (F) the presence or absence of hazardous materials on, under or about the System or the adjoining or neighboring property; (G) the quality of any labor and materials used in any improvements on or benefiting the System; (H) the condition of title to the System; (I) the economics of the present or future operation of the System; or (J) the health effects related to the operation of the System. As between WDSF and the City, the City assumes the responsibility and risks of all defects to and conditions in the System, including defects and conditions, if any, that cannot be observed by inspection. WDSF shall not be liable for any latent or patent defects in the System.

Section 2.6 Further Action. Each of the Parties shall execute and deliver such other documents and take such further actions as may be reasonably required or appropriate to carry out the purposes and intents of this Agreement, including but not limited to a transfer agreement and/or bill of sale to effectuate WDSF's transfer of the System to the City at Substantial Completion or pursuant to Section 5.2 below.

ARTICLE III.

LICENSE TO ENTER PREMISES; TRANSFER COSTS

Section 3.1 License to Enter City Premises. The City hereby grants to WDSF and its contractors, including specifically CH2M Hill, a revocable, non exclusive license to enter upon property of the City at the City's landfill property located at 3501 W. 18th Street, Port Angeles, for

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the purpose of designing, installing, constructing and testing the System pursuant to the Design-Build Agreement, but for no other purposes.

Section 3.2 Transfer of System to Permanent Facility. The parties recognize that, due to changes in the City's water system as a result of the Elwha dams removal project, the System may at first be installed in a temporary water treatment facility. If the System is installed in a temporary facility, it will be necessary to transfer the System to a permanent facility at some date in the future. The estimated cost to transfer the System is thirty thousand dollars (\$30,000). If the System is installed in a temporary facility, WDSF hereby agrees to reimburse the City for all costs incurred by the City in moving the System to a permanent facility, provided the amount of reimbursement shall not exceed thirty thousand dollars (\$30,000) (the "System Transfer Costs").

ARTICLE IV. CITY'S REPRESENTATIONS AND WARRANTIES

The City hereby represents and warrants as follows.

Section 4.1 The City has the full right, power and authority to enter into this Agreement, to accept WDSF's gift of the System, and to accept all of WDSF's right, title and interest in and to the System upon its transfer by WDSF at Substantial Completion or otherwise pursuant to Section 5.2 below.

Section 4.2 The City's performance hereunder does not violate any agreement between the City and any third party, any obligation owed by the City to any third party, or the rights of any third party.

Section 4.3 Other than litigation or claims that may arise directly as a result of the denial of Protect the Peninsula's Future, Clallam County Citizens for Safe Drinking Water, Barney Munger and Eloise Kailin's State Environmental Protection Act claim, there is no pending claim, action, suit, proceeding, litigation, arbitration, or investigation against the City, and the City is not subject to any continuing injunction, judgment or other order of any court, arbitrator or governmental agency that affects the City's ability to enter into this Agreement or to carry out its obligations set forth herein.

Section 4.4 The City will use the System exclusively for public purposes within the meaning of Section 170(c)(1) of the Code, and the City will not take or fail to take any action that would cause the System to be used for any other purposes.

ARTICLE V. CITY'S RESPONSIBILITIES

The City agrees and covenants as follows.

Section 5.1 The City shall accept WDSF's transfer of the System and will assume all of WDSF's right title and interest in and to the System at Substantial Completion in accordance with the terms and conditions of this Agreement.

Section 5.2 The City shall accept WDSF's transfer of the System and will assume all of

WDSF's right title and interest in and to the System, in whatever state of completion as the System may exist, in the event of any termination of the Design-Build Agreement prior to Substantial Completion of the System.

Section 5.3 The City shall not take or fail to take any action that will or could prevent its acceptance of WDSF's gift of the System or result in its rejection of the System prior to or after Substantial Completion, as the case may be

Section 5.4 The City shall, alone and in conjunction with CH2M Hill, as required under the Design Build Agreement, use reasonable and good faith efforts to obtain or provide for all consents, approvals or other action by or any registration with, notice to or filing with any person, entity, court or administrative or governmental body required in order to fluoridate the Port Angeles public water supply; and, not later than one hundred eighty (180) days after the earlier of (a) final termination of all legal challenges to fluoridation of the City's water supply or (b) Substantial Completion, the City shall have secured all licenses, permits, registrations and other authorizations required under federal, Washington, or local law necessary to fluoridate the Port Angeles public water supply.

Section 5.5 Upon Substantial Completion and transfer by WDSF of the System, the City shall fluoridate the Port Angeles public water supply for a continuous ten (10) year period, except for reasonable periods of time for normal maintenance or repair or any break in service necessary to switch-over to a future permanent water fluoridation system, and except in the event the City is prevented from fluoridating the Port Angeles public water supply as a result of a court order or other judicial decision.

Section 5.6 As between the City and WDSF, the City shall be responsible for investigating each and every aspect of the System's construction and future operation, including, without limitation: (i) all matters relating to the title, and all governmental and other legal requirements such as taxes, assessments, zoning, use permit requirements, building permit requirements, building codes, and other development requirements; (ii) the physical condition of the System, including, without limitation, the infrastructure available or unavailable to the System (as the case may be), access to the System, all other physical and functional aspects of the System, including the presence or absence of hazardous or toxic materials, substances or wastes of any kind; and (iii) all other matters of any significance affecting the System whether physical in nature or intangible in nature.

Section 5.7 The City hereby agrees, at its cost, to defend with due diligence any lawsuit filed by a third party that has as its goal the temporary or permanent injunction of the operation of the System, including any lawsuit filed as a result of the City's denial of Protect the Peninsula's Future, Clallam County Citizens for Safe Drinking Water, Barney Munger and Eloise Kailin's State Environmental Protection Act claim.

Section 5.8 The City shall designate one or more representatives to work with and to assist CH2M Hill with the design, construction, and installation of the System, as necessary, to ensure that the System meets the requirements of the City and all applicable laws concerning the fluoridation of a public water supply.

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Section 5.9 In the event the City fails to meet any of its obligations under Article IV or Article V, after notice and a thirty (30) day opportunity to cure, the City hereby agrees and covenants to repay WDSF any and all amounts WDSF expends or has expended for or in connection with the design, construction and installation of the System, including without limitation all administrative costs and expenses, legal or other professional fees, personnel time and the System Transfer Costs (the "Repayment Amount"), such Repayment Amount not to exceed \$433,000; provided, however, that the foregoing limitation on the Repayment Amount shall not relieve or limit the City's obligations to indemnify and hold WDSF harmless under Article VII.

ARTICLE VI. CONDITIONS TO WDSF GIFT

The Gift is subject to and conditioned upon satisfaction of the conditions listed below, unless waived in writing by WDSF:

Section 6.1 WDSF and CH2M Hill shall have entered into the Design-Build Agreement for the design, construction and installation of the System.

Section 6.2 CH2M Hill and WDSF shall have agreed in writing that the System can and shall be designed, constructed and installed by CH2M Hill for a Contract Price of three hundred forty-three thousand dollars (\$343,000), plus Washington State sales taxes (the "Contract Price"). Notwithstanding anything herein to the contrary, in the event a legal proceeding suspends, delays or interrupts all or any part of the design, construction or installation of the System leading to increases in the Contract Price, WDSF hereby agrees to consider paying for all or a part of such increases to the Contract Price; provided, however, that in the event WDSF determines not to pay for such increases to the Contract Price, WDSF shall have no further obligation to the City or duty under this Agreement. In that event, WDSF shall have the right in its discretion to terminate the Design-Build Agreement and transfer the System to the City pursuant to Section 5.2 above.

Section 6.3 As of the Effective Date of this Agreement, the City shall have provided to WDSF written documentation evidencing formal action of the Port Angeles City Council authorizing and approving the City's entry into this Agreement.

Section 6.4 CH2M Hill and the City shall have secured all permits and complied with all requirements of any applicable governing bodies, including but not limited to the Washington State Department of Health, for the design, construction and installation of the System.

Section 6.5 There shall have been no significant breach or failure to perform under the Design-Build Agreement by CH2M Hill.

ARTICLE VII. INDEMNIFICATION

Section 7.1 Notwithstanding anything to the contrary contained in this Agreement, the City agrees and covenants to indemnify, defend and hold harmless WDSF and its trustees, officers, members, employees, agents and representatives from and against any and all causes of action, suits at law or equity or claims or demands and any costs, losses, liabilities, damages (including any special, indirect, incidental or consequential damages), judgments, lawsuits, claims and expenses

(including without limitation reasonable attorneys' fees and costs), of any nature, whether known or unknown, fixed or contingent, due or to become due, relating to, incurred in connection with, or arising out of any acts or omissions by the City or the operation of the System, including without limitation any breach of warranty or covenant hereunder. The City's obligations under this Section 7.1 shall not apply to the extent arising solely from WDSF's negligence or willful misconduct; provided, however, that to the extent that this Agreement constitutes a "covenant, promise, agreement or understanding in, or in connection with or collateral to, a contract or agreement relative to the construction, alteration, repair, addition to, subtraction from, improvement to, or maintenance of, any building, highway, road, railroad, excavation, or other structure, project, development, or improvement attached to real estate, including moving and demolition in connection therewith, purporting to indemnify against liability for damages arising out of bodily injury to persons or damage to property" within the meaning of RCW 4.24.115, the City's obligations under this Section 7.1 shall apply to the extent of the City's negligence.

Section 7.2 Notwithstanding anything to the contrary contained in this Agreement, to the maximum extent permitted by law, in no event shall WDSF be liable for any damages whatsoever (including, without limitation, direct, consequential, indirect, special, or incidental damages, or damages for loss of business profits, business interruption, loss of business information, or other pecuniary loss) arising out of the use or inability to use the System, under contract, tort (including negligence) or other cause of action and even if WDSF has been advised to the possibility of such damages.

Section 7.3 The foregoing indemnities specifically include, without limitation, claims brought by the City's employees against WDSF. THE FOREGOING INDEMNITIES ARE EXPRESSLY INTENDED TO CONSTITUTE A WAIVER OF THE CITY'S IMMUNITY UNDER WASHINGTON'S INDUSTRIAL INSURANCE ACT, RCW TITLE 51, TO THE EXTENT NECESSARY TO PROVIDE WDSF WITH A FULL AND COMPLETE INDEMNITY FROM CLAIMS MADE BY THE CITY AND ITS EMPLOYEES, TO THE EXTENT OF THEIR NEGLIGENCE. THE CITY AND WDSF ACKNOWLEDGE THAT THE INDEMNIFICATION PROVISIONS OF THIS ARTICLE WERE SPECIFICALLY NEGOTIATED AND AGREED UPON BY THEM.

ARTICLE VIII. GENERAL

Section 8.1 Choice of Law. This Agreement shall be governed and interpreted according to the laws of the State of Washington. The Parties agree that Clallam County, in the State of Washington, shall be the exclusive and proper forum for any action or proceeding, including arbitration, if any, brought under this Agreement. The Parties accept the personal jurisdiction of such courts.

Section 8.2 Dispute Resolution. The Parties shall use reasonable, good faith efforts to cooperatively resolve any disputes that arise in connection with this Agreement. When a bona fide dispute arises between the City and WDSF subject to this Section 8.2 the parties shall each notify the other of the dispute, with the notice specifying the disputed issues and the position of the Party submitting the notice. If the Parties are unable to resolve a dispute within ten (10) business days, pursuant to this Section 8.2 either Party may proceed with any remedy available to it at law or in

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equity.

Section 8.3 Remedies. Except as otherwise provided for herein, no remedy conferred by any of the specific provisions of the Agreement or available to WDSF is intended to be exclusive of any other remedy, and each and every remedy shall be cumulative and shall be in addition to every other remedy given hereunder, now or hereafter existing at law or in equity or by statute or otherwise. The election of any one or more remedies by WDSF shall not constitute a waiver of the right to pursue other available remedies. The City's sole and exclusive remedy from the City's use or inability to use the System or any breach of this Agreement by WDSF shall be for the City to discontinue use of the System or to repair or modify the System at the City's election and sole expense or, when applicable, to pursue legal remedies under the Design-Build Agreement.

Section 8.4 Amendments. This Agreement may be amended, supplemented or modified only by a writing dated and signed by both Parties.

Section 8.5 Assignment. Except as specifically provided in this Agreement, neither Party may assign or transfer this Agreement or any of its rights hereunder, or delegate any of its duties hereunder, without the prior written consent of the other Party. Any attempted assignment, transfer, or delegation in contravention of this Section 8.5 shall be null and void. This Agreement shall inure to the benefit of and be binding on the Parties hereto and their permitted successors and assigns.

Section 8.6 Severability. If any provision of this Agreement is invalid or unenforceable, the other provisions herein shall remain in full force and effect in such jurisdiction and shall be liberally construed in order to effectuate the purpose and intent of this Agreement, and the invalidity or unenforceability of any provision of this Agreement in any jurisdiction shall not affect the validity or enforceability of any such provision in any other jurisdiction.

Section 8.7 Waiver. Any failure or delay by either Party to exercise or partially exercise any right, power or privilege hereunder shall not be deemed a waiver of any of the rights, powers or privileges under the Agreement. No term or condition of this Agreement shall be held to be waived, modified or deleted except by a written instrument signed by the Parties hereto. No such waiver, modification or deletion in any one instance shall be deemed to be a waiver, modification or deletion of a term or condition in any other instance, whether like or unlike. Waiver of any breach of any term or condition of this Agreement shall not be deemed a waiver of any prior or subsequent breach.

Section 8.8 Entire Agreement. This Agreement constitutes the entire agreement of the Parties with respect to the subject matter hereof, and is not subject to amendment or modification except as provided herein.

Section 8.9 Force Majeure. Neither party shall be deemed to be in violation of this Agreement if such party is prevented from performing any of its obligations hereunder for any reason beyond its control, including without limitation, acts of God or of any public enemy, elements, flood, strikes, or an injunction or other judicial decision.

Section 8.10 Binding Effect. This Agreement shall be binding upon and shall inure to the benefit of the Parties thereto and their respective successors and assigns.

Section 8.11 Section Headings. The headings of sections in this Agreement are for reference only and shall not affect the meaning of this Agreement.

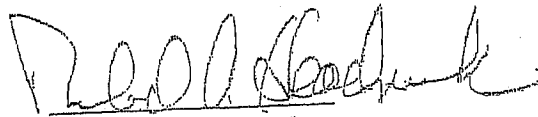
Section 8.12 Survival. The terms and conditions contained in the Agreement that by their sense and context are intended to survive the performance of the Agreement by the Parties shall so survive the completion of the performance, cancellation or termination of the Agreement, including without limitation Section 2.4, Section 2.5, Article VI and Article VIII.

IN WITNESS WHEREOF, the Parties have caused their duly authorized representatives to execute this Agreement as of the date written below.

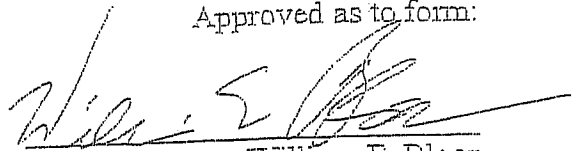
WASHINGTON DENTAL SERVICE
FOUNDATION, LLC

CITY OF PORT ANGELES, WASHINGTON

By: _____
Name: Tracy E. Garland
Its: President and CEO
Date: _____

By: 
Name: Richard A. Headrick
Its: Mayor
Date: March 1, 2005

Approved as to form:


William E. Bloor
City Attorney

Attest:


Becky Upton
City Clerk

RCW 35A.11.020

Powers vested in legislative bodies of noncharter and charter code cities.

The legislative body of each code city shall have power to organize and regulate its internal affairs within the provisions of this title and its charter, if any; and to define the functions, powers, and duties of its officers and employees; within the limitations imposed by vested rights, to fix the compensation and working conditions of such officers and employees and establish and maintain civil service, or merit systems, retirement and pension systems not in conflict with the provisions of this title or of existing charter provisions until changed by the people: PROVIDED, That nothing in this section or in this title shall permit any city, whether a code city or otherwise, to enact any provisions establishing or respecting a merit system or system of civil service for firefighters and police officers which does not substantially accomplish the same purpose as provided by general law in chapter 41.08 RCW for firefighters and chapter 41.12 RCW for police officers now or as hereafter amended, or enact any provision establishing or respecting a pension or retirement system for firefighters or police officers which provides different pensions or retirement benefits than are provided by general law for such classes.

Such body may adopt and enforce ordinances of all kinds relating to and regulating its local or municipal affairs and appropriate to the good government of the city, and may impose penalties of fine not exceeding five thousand dollars or imprisonment for any term not exceeding one year, or both, for the violation of such ordinances, constituting a misdemeanor or gross misdemeanor as provided therein. However, the punishment for any criminal ordinance shall be the same as the punishment provided in state law for the same crime. Such a body alternatively may provide that violation of such ordinances constitutes a civil violation subject to monetary penalty, but no act which is a state crime may be made a civil violation.

The legislative body of each code city shall have all powers possible for a city or town to have under the Constitution of this state, and not specifically denied to code cities by law. By way of illustration and not in limitation, such powers may be exercised in regard to the acquisition, sale, ownership, improvement, maintenance, protection, restoration, regulation, use, leasing, disposition, vacation, abandonment or beautification of public ways, real property of all kinds, waterways, structures, or any other improvement or use of real or personal property, in regard to all aspects of collective bargaining as provided for and subject to the provisions of chapter 41.56 RCW, as now or hereafter amended, and in the rendering of local social, cultural, recreational, educational, governmental, or corporate services, including operating and supplying of utilities and municipal services commonly or conveniently rendered by cities or towns.

In addition and not in limitation, the legislative body of each code city shall have any authority ever given to any class of municipality or to all municipalities of this state before or after the enactment of this title, such authority to be exercised in the manner provided, if any, by the granting statute, when not in conflict with this title. Within constitutional limitations, legislative bodies of code cities shall have within their territorial limits all powers of taxation for local purposes except those which are expressly preempted by the state as provided in RCW 66.08.120, 82.36.440, 48.14.020, and 48.14.080.

[2007 c 218 § 66; 1993 c 83 § 8; 1986 c 278 § 7; 1984 c 258 § 807; 1969 ex.s. c 29 § 1; 1967 ex.s. c 119 § 35A.11.020.]

Notes:

Intent -- Finding -- 2007 c 218: See note following RCW 1.08.130.

Effective date -- 1993 c 83: See note following RCW 35.21.163.

Severability -- 1986 c 278: See note following RCW 36.01.010.

Court Improvement Act of 1984 -- Effective dates -- Severability -- Short title -- 1984 c 258: See notes following RCW 3.30.010.

Effective date -- 1969 ex.s. c 29: "The effective date of this act is July 1, 1969." [1969 ex.s. c 29 § 2.]

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RCW 35A.70.070**Public health and safety, general laws applicable.**

Every code city may exercise the powers authorized and shall perform the duties imposed upon cities of like population relating to the public health and safety as provided by Title 70 RCW and, without limiting the generality of the foregoing, shall: (1) Organize boards of health and appoint a health officer with the authority, duties and functions as provided in chapter 70.05 RCW, or provide for combined city-county health departments as provided and in accordance with the provisions of chapter 70.08 RCW; (2) contribute and participate in public health pooling funds as authorized by chapter 70.12 RCW; (3) control and provide for treatment of *venereal diseases as authorized by chapter 70.24 RCW; (4) provide for the care and control of tuberculosis as provided in chapters 70.28, 70.30, **70.32, and 70.54 RCW; (5) participate in health districts as authorized by chapter 70.46 RCW; (6) exercise control over water pollution as provided in chapter 35.88 RCW; (7) for all code cities having a population of more than twenty thousand serve as a primary district for registration of vital statistics in accordance with the provisions of chapter 70.58 RCW; (8) observe and enforce the provisions relating to fireworks as provided in chapter 70.77 RCW; (9) enforce the provisions relating to swimming pools provided in chapter 70.90 RCW; (10) enforce the provisions of chapter 18.20 RCW when applicable; (11) perform the functions relating to mentally ill prescribed in chapters 72.06 and 71.12 RCW; (12) cooperate with the state department of social and health services in mosquito control as authorized by RCW 70.22.060; and (13) inspect nursing homes as authorized by RCW 18.51.145.

[1987 c 223 § 4; 1985 c 213 § 12; 1981 1st ex.s. c 2 § 25; 1979 c 141 § 42; 1967 ex.s. c 119 § 35A.70.070.]

Notes:

Reviser's note: *(1) The term "venereal diseases" was changed to "sexually transmitted diseases" by 1988 c 206.

** (2) Chapter 70.32 RCW was repealed and/or recodified in its entirety pursuant to 1999 c 172.

Savings -- Effective date -- 1985 c 213: See notes following RCW 43.20.050.

Severability -- Effective date -- 1981 1st ex.s. c 2: See notes following RCW 18.51.010.

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RCW 35.17.290

Legislative — Initiative petition — Appeal to court.

If the clerk finds the petition insufficient or if the commission refuses either to pass an initiative ordinance or order an election thereon, any taxpayer may commence an action in the superior court against the city and procure a decree ordering an election to be held in the city for the purpose of voting upon the proposed ordinance if the court finds the petition to be sufficient.

[1965 c 7 § 35.17.290. Prior: (i) 1911 c 116 § 20, part; RRS § 9109, part. (ii) 1911 c 116 § 21, part; RRS § 9110, part.]

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Chapter 35.88 RCW
Water pollution — protection from
Chapter Listing

RCW Sections

- 35.88.010 Authority over sources of supply.
- 35.88.020 Enforcement of ordinance — Special police.
- 35.88.030 Pollution declared to be a nuisance -- Abatement.
- 35.88.040 Pollution as criminal nuisance -- Punishment.
- 35.88.050 Prosecution -- Trial -- Abatement of nuisance.
- 35.88.060 Health officers and mayor must enforce.
- 35.88.070 Injunction proceeding.
- 35.88.080 Inland cities over one hundred thousand -- Discharge of sewage and other discharges prohibited -- Nuisance.
- 35.88.090 Inland cities over one hundred thousand -- Investigation of disposal systems by secretary of social and health services.

Notes:

Furnishing impure water: RCW 70.54.020.

Pollution of watershed or source of drinking water: RCW 70.54.010, 70.54.030.

Sewerage improvement districts: Chapter 85.08 RCW.

Water-sewer districts: Title 57 RCW.

35.88.010

Authority over sources of supply.

For the purpose of protecting the water furnished to the inhabitants of cities and towns from pollution, cities and towns are given jurisdiction over all property occupied by the works, reservoirs, systems, springs, branches and pipes, by means of which, and of all the lakes, rivers, springs, streams, creeks, or tributaries constituting the sources of supply from which the cities and towns or the companies or individuals furnishing water to the inhabitants thereof obtain their supply of water, or store or conduct it, and over all property acquired for any of the foregoing works or purposes or for the preservation and protection of the purity of the water supply, and over all property within the areas draining into the lakes, rivers, springs, streams, creeks, or tributaries constituting the sources of supply whether they or any of them are within the city or town limits or outside.

[1965 c 7 § 35.88.010. Prior: 1907 c 227 § 1, part; 1899 c 70 § 1, part; RRS § 9473, part.]

35.88.020

Enforcement of ordinance — Special police.

Every city and town may by ordinance prescribe what acts shall constitute offenses against the purity of its water supply and the punishment or penalties therefor and enforce them. The mayor of each city and town may appoint special police officers, with such compensation as the city or town may fix, who shall, after taking oath, have the powers of constables, and who may arrest with or without warrant any person committing, within the territory over which any city or town is given jurisdiction by this chapter, any offense declared by law or by ordinance, against the purity of the water supply, or which violate any rule or regulation lawfully promulgated by the state board of health for the protection of the purity of

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such water supply. Every special police officer whose appointment is authorized herein may take any person arrested for any such offense or violation before any court having jurisdiction thereof to be proceeded with according to law. Every such special police officer shall, when on duty wear in plain view a badge or shield bearing the words "special police" and the name of the city or town by which he or she has been appointed.

[2007 c 218 § 70; 1965 c 7 § 35.88.020. Prior: 1907 c 227 § 1, part; 1899 c 70 § 1, part; RRS § 9473, part.]

Notes:

Intent -- Finding -- 2007 c 218: See note following RCW 1.08.130.

35.88.030

Pollution declared to be a nuisance — Abatement.

The establishment or maintenance of any slaughter pens, stock feeding yards, hogpens, or the deposit or maintenance of any uncleanly or unwholesome substance, or the conduct of any business or occupation, or the allowing of any condition upon or sufficiently near the (1) sources from which the supply of water for the inhabitants of any city or town is obtained, or (2) where its water is stored, or (3) the property or means through which the same may be conveyed or conducted so that such water would be polluted or the purity of such water or any part thereof destroyed or endangered, is prohibited and declared to be unlawful, and is declared to constitute a nuisance, and may be abated as other nuisances are abated.

[1965 c 7 § 35.88.030. Prior: 1899 c 70 § 2, part; RRS § 9474, part.]

35.88.040

Pollution as criminal nuisance — Punishment.

Any person who does, establishes, maintains, or creates any of the things which have the effect of polluting any such sources of water supply, or water, and any person who does any of the things in RCW 35.88.030 declared to be unlawful, shall be deemed guilty of creating and maintaining a nuisance, and may be prosecuted therefor, and upon conviction thereof may be fined in any sum not exceeding five hundred dollars.

[1965 c 7 § 35.88.040. Prior: 1899 c 70 § 2, part; RRS § 9474, part.]

Notes:

Nuisance: Chapter 9.66 RCW.

35.88.050

Prosecution — Trial — Abatement of nuisance.

If upon the trial of any person for the violation of any of the provisions of this chapter he is found guilty of creating or maintaining a nuisance or of violating any of the provisions of this chapter, he shall forthwith abate the nuisance, and if he fails so to do within one day after such conviction, unless further time is granted by the court, a warrant shall be issued by the court wherein the conviction was obtained, directed to the sheriff of the county in which such nuisance exists and the sheriff shall forthwith proceed to abate the said nuisance and the cost thereof shall be taxed against the person so convicted as a part of the costs of such case.

[1965 c 7 § 35.88.050. Prior: 1899 c 70 § 3; RRS § 9475.]

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35.88.060**Health officers and mayor must enforce.**

The city health officer, city physician, board of public health, mayor, or any other officer, who has the sanitary condition of the city or town in charge, shall see that the provisions of this chapter are enforced and upon complaint being made to any such officer of an alleged violation, he shall immediately investigate the said complaint and if the same appears to be well founded he shall file a complaint against the person or persons violating any of the provisions of this chapter and cause their arrest and prosecution.

[1965 c 7 § 35.88.060. Prior: 1899 c 70 § 4; RRS § 9476.]

35.88.070**Injunction proceeding.**

If any provision of this chapter is being violated, the city or town supplied with the water or a corporation owning waterworks for the purpose of supplying the city or town or the inhabitants thereof with water may, by civil action in the superior court of the proper county, have the maintenance of the nuisance which pollutes or tends to pollute the said water, enjoined and such injunction may be perpetual.

[1965 c 7 § 35.88.070. Prior: 1899 c 70 § 5; RRS § 9477.]

35.88.080**Inland cities over one hundred thousand — Discharge of sewage and other discharges prohibited — Nuisance.**

Any city not located on tidewater, having a population of one hundred thousand or more, is hereby prohibited from discharging, draining or depositing, or causing to be discharged, drained or deposited, any sewage, garbage, feculent matter, offal, refuse, filth, or any animal, mineral, or vegetable matter or substance, offensive, injurious or dangerous to health, into any springs, streams, rivers, lakes, tributaries thereof, wells, or into any subterranean or other waters used or intended to be used for human or animal consumption or for domestic purposes.

Anything done, maintained, or suffered, in violation of any of the provisions of this section, shall be deemed to be a public nuisance, and may be summarily abated as such by any court of competent jurisdiction at the suit of the secretary of social and health services or any person whose supply of water for human or animal consumption or for domestic purposes is or may be affected.

[1979 c 141 § 40; 1965 c 7 § 35.88.080. Prior: (i) 1941 c 186 § 1; Rem. Supp. 1941 § 9354-1. (ii) 1941 c 186 § 3; Rem. Supp. 1941 § 9354-3.]

Notes:

Nuisance: Chapter 9.66 RCW.

35.88.090**Inland cities over one hundred thousand — Investigation of disposal systems by secretary of social and health services.**

The secretary of social and health services shall have the power, and it shall be his duty, to investigate the system of disposal of sewage, garbage, feculent matter, offal, refuse, filth, or any animal, mineral, or vegetable matter or

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substance, by cities not located on tidewater, having a population of one hundred thousand or more, and if he shall determine upon investigation that any such system or systems of disposal is or may be injurious or dangerous to health, he shall have the power, and it shall be his duty, to order such city or cities to provide for, construct, and maintain a system or systems of disposal which will not be injurious or dangerous to health. .

[1979 c 141 § 41; 1965 c 7 § 35.88.090. Prior: 1941 c 186 § 2; Rem. Supp. 1941 § 9354-2.]

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RCW 70.142.010

Establishment of standards for chemical contaminants in drinking water by state board of health.

(1) In order to protect public health from chemical contaminants in drinking water, the state board of health shall conduct public hearings and, where technical data allow, establish by rule standards for allowable concentrations. For purposes of this chapter, the words "chemical contaminants" are limited to synthetic organic chemical contaminants and to any other contaminants which in the opinion of the board constitute a threat to public health. If adequate data to support setting of a standard is available, the state board of health shall adopt by rule a maximum contaminant level for water provided to consumers' taps. Standards set for contaminants known to be toxic shall consider both short-term and chronic toxicity. Standards set for contaminants known to be carcinogenic shall be consistent with risk levels established by the state board of health.

(2) The board shall consider the best available scientific information in establishing the standards. The board may review and revise the standards. State and local standards for chemical contaminants may be more strict than the federal standards.

[1984 c 187 § 1.]

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173-200-010 << 173-200-020 >> 173-200-030

No Washington State Register filings since 2003

WAC 173-200-020**Definitions.**

As used in this chapter:

- (1) "Activity" means any site, area, facility, structure, vehicle, installation, or discharge which may produce pollution.
- (2) "Artificial ground water" means ground water that has been put in place through means, such as irrigation, other than natural recharge.
- (3) "Background water quality" means the concentrations of chemical, physical, biological, or radiological constituents, or other characteristics in or of ground water at a particular point in time and upgradient of an activity that have not been affected by that activity.
- (4) "Beneficial uses" means uses of waters of the state which include but are not limited to use for domestic, stock watering, industrial, commercial, agricultural, irrigation, mining, fish and wildlife maintenance and enhancement, recreation, generation of electric power and preservation of environmental and aesthetic values, and all other uses compatible with the enjoyment of the public waters of the state.
- (5) "Best management practices" or "BMPs" mean schedules of activities, prohibitions of practices, maintenance of procedures, and other management practices, to prevent or reduce the pollution of ground waters of the state. BMPs also include treatment requirements, operating procedures and practices to control plant site runoff, spillage or leaks, sludge or water disposal, or drainage from raw material storage.
- (6) "Carcinogen" means any substance or agent that produces or tends to produce cancer in humans. For implementation of this chapter, the term carcinogen will apply to all substances on the United States Environmental Protection Agency Integrated Risk Information System, IRIS data base, of A (known human) and B1 and B2 (probable human) carcinogens for which IRIS listed an oral slope factor.
- (7) "Contaminant" means any chemical, physical, biological, or radiological substance that does not occur naturally in ground water or that occurs at concentrations greater than those in the natural levels.
- (8) "Criteria" means numerical values or narrative standards that represent the maximum allowable contaminant concentrations in the ground water.
- (9) "Department" means the Washington state department of ecology.
- (10) "Early warning value" means a concentration set in accordance with WAC 173-200-070 that is a percentage of a ground water quality enforcement limit.
- (11) "Enforcement limit" means the value assigned to any contaminant for the purposes of regulating that contaminant.
- (12) "Ground water" means water in a saturated zone or stratum beneath the surface of land or below a surface water body.
- (13) "Human-caused pollution" means pollution resulting from human activity.
- (14) "Isolated ground water" means ground water fully separated from other ground waters by an impermeable layer of rock or strata.
- (15) "Maximum contaminant level" or "MCL" means the maximum concentration of a contaminant in water established by the Environmental Protection Agency under the Federal Safe Drinking Water Act (42 U.S.C. 300f et seq.) and published in 40 C.F.R. 141 as presently promulgated or as subsequently amended or repromulgated.
- (16) "Maximum contaminant level goal" or "MCLG" means the maximum concentration of a contaminant established by the Environmental Protection Agency under the Federal Safe Drinking Water Act (42 U.S.C. 300f et seq.) and published in 40 C.F.R. 141 as presently promulgated or subsequently amended or repromulgated, for which no known or anticipated adverse effects on human health occur including an adequate margin of safety.
- (17) "Natural ground water quality" means ground water quality that was present before any human-caused pollution.
- (18) "Naturally nonpotable ground water" means ground water that is unsuitable for drinking water because of natural ground water quality and for which current treatment methods are considered unreasonable and impractical.

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246-290-72011 << 246-290-72012 >> 246-290-800

**WAC 246-290-72012
Regulated contaminants.**

Washington State Register filings since 2003

Contaminant (units)	traditional MCL in mg/L	to convert for CCR, multiply by	MCL in CCR units	MCLG	Major Sources in Drinking Water	Health Effects Language
Microbiological Contaminants						
Total Coliform Bacteria	MCL: (systems that collect ≥ 40 samples/ month) more than 5% of monthly samples are positive; (systems that collect < 40 samples/ month) 2 or more positive samples per monthly sampling period		MCL: (systems that collect ≥ 40 samples/ month) more than 5% of monthly samples are positive; (systems that collect < 40 samples/ month) 2 or more positive samples per monthly sampling period	0	Naturally present in the environment	Coliforms are bacteria that are naturally present in the environment and are used as an indicator that other, potentially- harmful, bacteria may be present. Coliforms were found in more samples than allowed and this was a warning of potential problems.
Fecal coliform and <i>E. coli</i>	0		0	0	Human and animal fecal waste	Fecal coliforms and <i>E. coli</i> are bacteria whose presence indicates that the water may be contaminated with human or animal wastes. Microbes in these wastes can cause short-term effects, such as diarrhea, cramps, nausea, headaches, or other symptoms. They may pose a special health risk for infants, young children, some of the elderly, and people with severely- compromised immune systems.
Total organic carbon (ppm)	TT	-	TT	n/a	Naturally present in the environment	Total organic carbon (TOC) has no health effects. However, total organic carbon provides a medium for the formation of disinfection

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						by-products. These by-products include trihalomethanes (THMs) and haloacetic acids (HAAs). Drinking water containing these by-products in excess of the MCL may lead to adverse health effects, liver or kidney problems, or nervous system effects, and may lead to an increased risk of getting cancer.
Turbidity (NTU)	TT.	-	TT	n/a	Soil runoff	Turbidity has no health effects. However, turbidity can interfere with disinfection and provide a medium for microbial growth. Turbidity may indicate the presence of disease-causing organisms. These organisms include bacteria, viruses, and parasites that can cause symptoms such as nausea, cramps, diarrhea and associated headaches.
<i>Giardia lamblia</i> Viruses <i>Cryptosporidium</i>	TT.	-	TT.	n/a	Human and animal fecal waste	Inadequately treated water may contain disease-causing organisms. These organisms include bacteria viruses, and parasites which can cause symptoms such as nausea, cramps, diarrhea, and associated headaches.
Heterotrophic plate count (HPC) bacteria	TT.	-	TT.	n/a	HPC measures a range of bacteria that are naturally present in the environment	Inadequately treated water may contain disease-causing organisms. These organisms include bacteria viruses, and parasites which can cause symptoms such as nausea, cramps, diarrhea, and associated headaches.
Legionella	TT.	-	TT.	n/a	Found naturally in water; multiplies in heating systems	Inadequately treated water may contain disease-causing organisms. These organisms include bacteria viruses, and parasites which can cause symptoms such as nausea, cramps, diarrhea, and associated headaches.

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Radioactive Contaminants

Beta/photon emitters (mrem/yr)	4 mrem/yr	-	4	n/a	Decay of natural and man-made deposits	Certain minerals are radioactive and may emit forms of radiation known as photons and beta radiation. Some people who drink water containing beta and photon emitters in excess of the MCL over many years may have an increased risk of getting cancer.
				0		
Alpha emitters (pCi/l)	15 pCi/l	-	15	n/a	Erosion of natural deposits	Certain minerals are radioactive and may emit a form of radiation known as alpha radiation. Some people who drink water containing alpha emitters in excess of the MCL over many years may have an increased risk of getting cancer.
				0		
Combined radium (pCi/l)	5 pCi/l	-	5	n/a	Erosion of natural deposits	Some people who drink water containing radium 226 or 228 in excess of the MCL over many years may have an increased risk of getting cancer.
				0		
Uranium (pCi/l)	30 micro g/l	-	30	0	Erosion of natural deposits	Some people who drink water containing uranium in excess of the MCL over many years may have an increased risk of getting cancer and kidney toxicity.

Inorganic Contaminants

Antimony (ppb)	.006	1000	6	6	Discharge from petroleum refineries; fire retardants; ceramics; electronics; solder	Some people who drink water containing antimony well in excess of the MCL over many years could experience increases in blood cholesterol and decreases in blood sugar.
Arsenic (ppb)	.05	1000	50	n/a	Erosion of natural deposits; Runoff from orchards; Runoff from glass and electronics production wastes	Some people who drink water containing arsenic in excess of the MCL over many years could experience skin damage or problems with their circulatory system, and may have an increased risk of getting cancer.
*Effective 1/23/06	0.010	1000	10	0		
Asbestos (MFL)	7 MFL	-	7	7	Decay of asbestos cement water mains; Erosion of natural	Some people who drink water containing asbestos in excess of the MCL over many years may have an

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					deposits	increased risk of developing benign intestinal polyps.
Barium (ppm)	2	-	2	2	Discharge of drilling wastes; Discharge from metal refineries; Erosion of natural deposits	Some people who drink water containing barium in excess of the MCL over many years could experience an increase in their blood pressure.
Beryllium (ppb)	.004	1000	4	4	Discharge from metal refineries and coal-burning factories; Discharge from electrical, aerospace, and defense industries	Some people who drink water containing beryllium well in excess of the MCL over many years could develop intestinal lesions.
Cadmium (ppb)	.005	1000	5	5	Corrosion of galvanized pipes; Erosion of natural deposits; Discharge from metal refineries; Runoff from waste batteries and paints	Some people who drink water containing cadmium in excess of the MCL over many years could experience kidney damage.
Chromium (ppb)	.1	1000	100	100	Discharge from steel and pulp mills; Erosion of natural deposits	Some people who use water containing chromium well in excess of the MCL over many years could experience allergic dermatitis.
Copper (ppm)	AL = 1.3	-	AL = 1.3	1.3	Corrosion of household plumbing systems; Erosion of natural deposits	Copper is an essential nutrient, but some people who drink water containing copper in excess of the action level over a relatively short amount of time could experience gastrointestinal distress. Some people who drink water containing copper in excess of the action level over many years could suffer liver or kidney damage. People with Wilson's Disease should consult their personal doctor.
Cyanide (ppb)	.2	1000	200	200	Discharge from steel/metal factories; Discharge from plastic and fertilizer factories	Some people who drink water containing cyanide well in excess of the MCL over many years could experience nerve damage or problems with their thyroid.
Fluoride (ppm)	4	-	4	4	Erosion of natural	Some people who drink water containing fluoride

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					deposits; Water additive which promotes strong teeth; Discharge from fertilizer and aluminum factories	in excess of the MCL over many years could get bone disease, including pain and tenderness of the bones. Fluoride in drinking water at half the MCL or more may cause mottling of children's teeth, usually in children less than nine years old. Mottling, also known as dental fluorosis, may include brown staining and/or pitting of the teeth, and occurs only in developing teeth before they erupt from the gums.
Lead (ppb)	AL = .015	1000	AL = 15	0	Corrosion of household plumbing systems; Erosion of natural deposits	Infants and children who drink water containing lead in excess of the action level could experience delays in their physical or mental development. Children could show slight deficits in attention span and learning abilities. Adults who drink this water over many years could develop kidney problems or high blood pressure.
Mercury [inorganic] (ppb)	.002	1000	2	2	Erosion of natural deposits; Discharge from refineries and factories; Runoff from landfills; Runoff from cropland	Some people who drink water containing inorganic mercury well in excess of the MCL over many years could experience kidney damage.
Nitrate (ppm)	10	-	10	10	Runoff from fertilizer use; Leaching from septic tanks, sewage; Erosion of natural deposits	Infants below the age of six months who drink water containing nitrate in excess of the MCL could become seriously ill and, if untreated, may die. Symptoms include shortness of breath and blue baby syndrome.
Nitrite (ppm)	1	-	1	1	Runoff from fertilizer use; Leaching from septic tanks, sewage; Erosion of natural deposits	Infants below the age of six months who drink water containing nitrite in excess of the MCL could become seriously ill and, if untreated, may die. Symptoms include shortness of breath and blue baby syndrome.
Selenium (ppb)	.05	1000	50	50	Discharge from	Selenium is an essential

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					petroleum and metal refineries; Erosion of natural deposits; Discharge from mines	nutrient. However, some people who drink water containing selenium in excess of the MCL over many years could experience hair or fingernail losses, numbness in fingers or toes, or problems with their circulation.
Thallium (ppb)	.002	1000	2	0.5	Leaching from ore-processing sites; Discharge from electronics, glass, and drug factories	Some people who drink water containing thallium in excess of the MCL over many years could experience hair loss, changes in their blood, or problems with their kidneys, intestines, or liver.
Synthetic Organic Contaminants including Pesticides and Herbicides						
2,4-D (ppb)	.07	1000	70	70	Runoff from herbicide used on row crops	Some people who drink water containing the weed killer 2,4-D well in excess of the MCL over many years could experience problems with their kidneys, liver, or adrenal glands.
2,4,5-TP [Silvex](ppb)	.05	1000	50	50	Residue of banned herbicide	Some people who drink water containing silvex in excess of the MCL over many years could experience liver problems.
Acrylamide	TT	-	TT	0	Added to water during sewage/wastewater treatment	Some people who drink water containing high levels of acrylamide over a long period of time could have problems with their nervous system or blood, and may have an increased risk of getting cancer.
Alachlor (ppb)	.002	1000	2	0	Runoff from herbicide used on row crops	Some people who drink water containing alachlor in excess of the MCL over many years could have problems with their eyes, liver, kidneys, or spleen, or experience anemia, and may have an increased risk of getting cancer.
Atrazine (ppb)	.003	1000	3	3	Runoff from herbicide used on row crops	Some people who drink water containing atrazine well in excess of the MCL over many years could experience problems with their cardiovascular system or reproductive difficulties.

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Benzo(a)pyrene [PAH] (nanograms/l)	.0002	1,000,000	200	0	Leaching from linings of water storage tanks and distribution lines	Some people who drink water containing benzo (a)pyrene in excess of the MCL over many years may experience reproductive difficulties and may have an increased risk of getting cancer.
Carbofuran (ppb)	.04	1000	40	40	Leaching of soil fumigant used on rice and alfalfa	Some people who drink water containing carbofuran in excess of the MCL over many years could experience problems with their blood, or nervous or reproductive systems.
Chlordane (ppb)	.002	1000	2	0	Residue of banned termiticide	Some people who drink water containing chlordane in excess of the MCL over many years could experience problems with their liver, or nervous system, and may have an increased risk of getting cancer.
Dalapon (ppb)	.2	1000	200	200	Runoff from herbicide used on rights of way	Some people who drink water containing dalapon well in excess of the MCL over many years could experience minor kidney changes.
Di(2-ethylhexyl) adipate (ppb)	.4	1000	400	400	Discharge from chemical factories	Some people who drink water containing di (2-ethylhexyl) adipate well in excess of the MCL over many years could experience toxic effects or reproductive difficulties.
Di(2-ethylhexyl) phthalate (ppb)	.006	1000	6	0	Discharge from rubber and chemical factories	Some people who drink water containing di (2-ethylhexyl) phthalate well in excess of the MCL over many years may have problems with their liver, or experience reproductive difficulties, and may have an increased risk of getting cancer.
Dibromochloropropane (ppt)	.0002	1,000,000	200	0	Runoff/leaching from soil fumigant used on soybeans, cotton, pineapples, and orchards	Some people who drink water containing DBCP in excess of the MCL over many years could experience reproductive problems and may have an increased risk of getting cancer.
Dinoseb (ppb)	.007	1000	7	7	Runoff from herbicide used on soybeans and vegetables	Some people who drink water containing dinoseb well in excess of the MCL over many

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						years could experience reproductive difficulties.
Diquat (ppb)	.02	1000	20	20	Runoff from herbicide use	Some people who drink water containing diquat in excess of the MCL over many years could get cataracts.
Dioxin [2,3,7,8-TCDD] (ppq)	.00000003	1,000,000,000	30	0	Emissions from waste incineration and other combustion; Discharge from chemical factories	Some people who drink water containing dioxin in excess of the MCL over many years could experience reproductive difficulties and may have an increased risk of getting cancer.
Endothall (ppb)	.1	1000	100	100	Runoff from herbicide use	Some people who drink water containing endothall in excess of the MCL over many years could experience problems with their stomach or intestines.
Endrin (ppb)	.002	1000	2	2	Residue of banned insecticide	Some people who drink water containing endrin in excess of the MCL over many years could experience liver problems.
Epichlorohydrin	TT	-	TT	0	Discharge from industrial chemical factories; An impurity of some water treatment chemicals	Some people who drink water containing high levels of epichlorohydrin over a long period of time could experience stomach problems, and may have an increased risk of getting cancer.
Ethylene dibromide (ppt)	.00005	1,000,000	50	0	Discharge from petroleum refineries	Some people who drink water containing ethylene dibromide in excess of the MCL over many years could experience problems with their liver, stomach, reproductive system, or kidneys, and may have an increased risk of getting cancer.
Glyphosate (ppb)	.7	1000	700	700	Runoff from herbicide use	Some people who drink water containing glyphosate in excess of the MCL over many years could experience problems with their kidneys or reproductive difficulties.
Heptachlor (ppt)	.0004	1,000,000	400	0	Residue of banned pesticide	Some people who drink water containing heptachlor in excess of the MCL over many years could experience liver damage and may have an increased risk

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Heptachlor epoxide (ppt)	.0002	1,000,000	200	0	Breakdown of heptachlor	of getting cancer. Some people who drink water containing heptachlor epoxide in excess of the MCL over many years could experience liver damage, and may have an increased risk of getting cancer.
Hexachlorobenzene (ppb)	.001	1000	1	0	Discharge from metal refineries and agricultural chemical factories	Some people who drink water containing hexachlorobenzene in excess of the MCL over many years could experience problems with their liver or kidneys, or adverse reproductive effects, and may have an increased risk of getting cancer.
Hexachlorocyclopentadiene (ppb)	.05	1000	50	50	Discharge from chemical factories	Some people who drink water containing hexachlorocyclopentadiene well in excess of the MCL over many years could experience problems with their kidneys or stomach.
Lindane (ppt)	.0002	1,000,000	200	200	Runoff/leaching from insecticide used on cattle, lumber, gardens	Some people who drink water containing lindane in excess of the MCL over many years could experience problems with their kidneys or liver.
Methoxychlor (ppb)	.04	1000	40	40	Runoff/leaching from insecticide used on fruits, vegetables, alfalfa, livestock	Some people who drink water containing methoxychlor in excess of the MCL over many years could experience reproductive difficulties.
Oxamyl [Vydate] (ppb)	.2	1000	200	200	Runoff/leaching from insecticide used on apples, potatoes and tomatoes	Some people who drink water containing oxamyl in excess of the MCL over many years could experience slight nervous system effects.
PCBs [Polychlorinated biphenyls] (ppt)	.0005	1,000,000	500	0	Runoff from landfills; Discharge of waste chemicals	Some people who drink water containing PCBs in excess of the MCL over many years could experience changes in their skin, problems with their thymus gland, immune deficiencies, or reproductive or nervous system difficulties, and may have an increased risk of getting cancer.
Pentachlorophenol	.001	1000	1	0	Discharge from	Some people who drink

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(ppb)					wood preserving factories	water containing pentachlorophenol in excess of the MCL over many years could experience problems with their liver or kidneys, and may have an increased risk of getting cancer.
Picloram (ppb)	.5	1000	500	500	Herbicide runoff	Some people who drink water containing picloram in excess of the MCL over many years could experience problems with their liver.
Simazine (ppb)	.004	1000	4	4	Herbicide runoff	Some people who drink water containing simazine in excess of the MCL over many years could experience problems with their blood.
Toxaphene (ppb)	.003	1000	3	0	Runoff/leaching from insecticide used on cotton and cattle	Some people who drink water containing toxaphene in excess of the MCL over many years could have problems with their kidneys, liver, or thyroid, and may have an increased risk of getting cancer.
Volatile Organic Contaminants						
Benzene (ppb)	.005	1000	5	0	Discharge from factories; Leaching from gas storage tanks and landfills	Some people who drink water containing benzene in excess of the MCL over many years could experience anemia or a decrease in blood platelets, and may have an increased risk of getting cancer.
Bromate (ppb)	.010	1000	10	0	By-product of drinking water disinfection	Some people who drink water containing bromate in excess of the MCL over many years may have an increased risk of getting cancer.
Carbon tetrachloride (ppb)	.005	1000	5	0	Discharge from chemical plants and other industrial activities	Some people who drink water containing carbon tetrachloride in excess of the MCL over many years could experience problems with their liver and may have an increased risk of getting cancer.
Chloramines (ppm)	MRDL = 4	-	MRDL = 4	MRDLG = 4	Water additive used to control microbes	Some people who use drinking water containing chloramines well in excess of the MRDL could experience

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						irritating effects to their eyes and nose. Some people who drink water containing chloramines well in excess of the MRDL could experience stomach discomfort or anemia.
Chlorine (ppm)	MRDL = 4	-	MRDL = 4	MRDLG = 4	Water additive used to control microbes	Some people who use drinking water containing chlorine well in excess of the MRDL could experience irritating effects to their eyes and nose. Some people who drink water containing chlorine well in excess of the MRDL could experience stomach discomfort.
Chlorite (ppm)	1	-	1	0.8	By-product of drinking water disinfection	Some infants and young children who drink water containing chlorite in excess of the MCL could experience nervous system effects. Similar effects may occur in fetuses of pregnant mothers who drink water containing chlorite in excess of the MCL. Some people may experience anemia.
Chlorine dioxide (ppb)	MRDL = .8	1000	MRDL = 800	MRDLG = 800	Water additive used to control microbes	Some infants and young children who drink water containing chlorine dioxide in excess of the MRDL could experience nervous system effects. Similar effects may occur in fetuses of pregnant mothers who drink water containing chlorine dioxide in excess of the MRDL. Some people may experience anemia.
Chlorobenzene (ppb)	.1	1000	100	100	Discharge from chemical and agricultural chemical factories	Some people who drink water containing chlorobenzene in excess of the MCL over many years could experience problems with their liver or kidneys.
o-Dichlorobenzene (ppb)	.6	1000	600	600	Discharge from industrial chemical factories	Some people who drink water containing o-dichlorobenzene well in excess of the MCL over many years could experience problems with their liver, kidneys, or circulatory systems.

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p-Dichlorobenzene (ppb)	.075	1000	75	75	Discharge from industrial chemical factories	Some people who drink water containing p-dichlorobenzene in excess of the MCL over many years could experience anemia, damage to their liver, kidneys, or spleen, or changes in their blood.
1,2-Dichloroethane (ppb)	.005	1000	5	0	Discharge from industrial chemical factories	Some people who drink water containing 1,2-dichloroethane in excess of the MCL over many years may have an increased risk of getting cancer.
1,1-Dichloroethylene (ppb)	.007	1000	7	7	Discharge from industrial chemical factories	Some people who drink water containing 1,1-dichloroethylene in excess of the MCL over many years could experience problems with their liver.
cis-1,2-Dichloroethylene (ppb)	.07	1000	70	70	Discharge from industrial chemical factories	Some people who drink water containing cis-1,2-dichloroethylene in excess of the MCL over many years could experience problems with their liver.
trans-1,2-Dichloroethylene (ppb)	.1	1000	100	100	Discharge from industrial chemical factories	Some people who drink water containing trans-1,2-dichloroethylene well in excess of the MCL over many years could experience problems with their liver.
Dichloromethane (ppb)	.005	1000	5	0	Discharge from pharmaceutical and chemical factories	Some people who drink water containing dichloromethane in excess of the MCL over many years could have liver problems and may have an increased risk of getting cancer.
1,2-Dichloropropane (ppb)	.005	1000	5	0	Discharge from industrial chemical factories	Some people who drink water containing 1,2-dichloropropane in excess of the MCL over many years may have an increased risk of getting cancer.
Ethylbenzene (ppb)	.7	1000	700	700	Discharge from petroleum refineries	Some people who drink water containing ethylbenzene well in excess of the MCL over many years could experience problems with their liver or kidneys.
Haloacetic Acids (HAA) (ppb)	.060	1000	60	n/a	By-product of drinking water	Some people who drink water containing

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					disinfection	haloacetic acids in excess of the MCL over many years may have an increased risk of getting cancer.
Styrene (ppb)	.1	1000	100	100	Discharge from rubber and plastic factories; Leaching from landfills	Some people who drink water containing styrene well in excess of the MCL over many years could have problems with their liver, kidneys, or circulatory system.
Tetrachloroethylene (ppb)	.005	1000	5	0	Discharge from factories and dry cleaners	Some people who drink water containing tetrachloroethylene in excess of the MCL over many years could have problems with their liver, and may have an increased risk of getting cancer.
1,2,4-Trichlorobenzene (ppb)	.07	1000	70	70	Discharge from textile-finishing factories	Some people who drink water containing 1,2,4-trichlorobenzene well in excess of the MCL over many years could experience changes in their adrenal glands.
1,1,1-Trichloroethane (ppb)	.2	1000	200	200	Discharge from metal degreasing sites and other factories	Some people who drink water containing 1,1,1-trichloroethane in excess of the MCL over many years could experience problems with their liver, nervous system, or circulatory system.
1,1,2-Trichloroethane (ppb)	.005	1000	5	3	Discharge from industrial chemical factories	Some people who drink water containing 1,1,2-trichloroethane well in excess of the MCL over many years could have problems with their liver, kidneys, or immune systems.
Trichloroethylene (ppb)	.005	1000	5	0	Discharge from metal degreasing sites and other factories	Some people who drink water containing trichloroethylene in excess of the MCL over many years could experience problems with their liver and may have an increased risk of getting cancer.
TTHMs [Total trihalomethanes] (ppb)	.080	1000	80	n/a	By-product of drinking water disinfection	Some people who drink water containing trihalomethanes in excess of the MCL over many years may experience problems with their liver, kidneys, or central nervous systems, and may have

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Toluene (ppm)	1	-	1	1	Discharge from petroleum factories	an increased risk of getting cancer. Some people who drink water containing toluene well in excess of the MCL over many years could have problems with their nervous system, kidneys, or liver.
Vinyl Chloride (ppb)	.002	1000	2	0	Leaching from PVC piping: Discharge from plastics factories	Some people who drink water containing vinyl chloride in excess of the MCL over many years may have an increased risk of getting cancer.
Xylenes (ppm)	10	-	10	10	Discharge from petroleum factories; Discharge from chemical factories	Some people who drink water containing xylenes in excess of the MCL over many years could experience damage to their nervous system.

Key

AL = Action Level

MCL = Maximum Contaminant Level

MCLG = Maximum Contaminant Level Goal

MFL = million fibers per liter

MRDL = Maximum Residual Disinfectant Level

MRDLG = Maximum Residual Disinfectant Level Goal

mrem/year = millirems per year (a measure of radiation absorbed by the body)

N/A = Not Applicable

NTU = Nephelometric Turbidity Units (a measure of water clarity)

pCi/l = picocuries per liter (a measure of radioactivity)

ppm = parts per million, or milligrams per liter (mg/l)

ppb = parts per billion, or micrograms per liter (μ g/l)

ppt = parts per trillion, or nanograms per liter

ppq = parts per quadrillion, or picograms per liter

TT = Treatment Technique

[Statutory Authority: RCW 70.119A.180 and 43.20.050. 08-03-061, § 246-290-72012, filed 1/14/08, effective 2/14/08. Statutory Authority: RCW 43.20.050 and 70.119A.080. 04-04-056, § 246-290-72012, filed 1/30/04, effective 3/1/04. Statutory Authority: RCW 43.20.050 (2) and (3) and 70.119A.080. 03-08-037, § 246-290-72012, filed 3/27/03, effective 4/27/03. Statutory Authority: RCW 43.20.050. 00-15-080, § 246-290-72012, filed 7/19/00, effective 8/19/00.]

Notes:

Reviser's note: The brackets and enclosed material in the text of the above section occurred in the copy filed by the agency.

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